

STATE BOARD OF ELECTIONS

STATE OF ILLINOIS

2329 S. MacArthur Blvd.
Springfield, Illinois 62704-4503
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James R. Thompson Center
100 W. Randolph St, Ste 14-100
Chicago, Illinois 60601-3232
312/814-6440 TTY: 312/814-6431
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EXECUTIVE DIRECTOR
Rupert T. Borgsmiller

BOARD MEMBERS
William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers
Betty J. Coffrin
Ernest L. Gowen
Judith C. Rice
Bryan A. Schneider
Charles W. Scholz

AGENDA

State Board of Elections
Sitting as the Duly Authorized
State Officers Electoral Board
Monday, August 6, 2012
10:00 a.m.

James R. Thompson Center – Suite 14-100
Chicago, Illinois
and via videoconference
2329 S. MacArthur Blvd.
Springfield, Illinois

Call State Board of Elections to order.

1. Recess the State Board of Elections and convene as the State Officers Electoral Board.
2. Approval of the minutes from the July 16 and 23 SOEB meetings.
3. Consideration of objections to candidate nominating petitions for the November 6, 2012 General Election:
 - a. *Direso v. Oberline*, 12SOEBGE101;
 - b. *James v. Gray*, 12SOEBGE109;
 - c. *Stanley v. Roman*, 12SOEBGE503;
 - d. *Abbott & Cabay v. Marks*, 12SOEBGE505;
 - e. *McSweeney v. Beaubien*, 12SOEBGE507.
4. Objections withdrawn:
 - a. *Alexander v. Bradshaw*, 12SOEBGE108;
 - b. *Morris v. Montalvo*, 12SOEBGE500;
 - c. *Storm & Eck v. Hartman*, 12SOEBGE506.
5. Recess the State Officers Electoral Board until August 24, 2012 at 10:30 a.m. or call of the Chairman, whichever occurs first.
6. Reconvene as the State Board of Elections.
7. Other business.
8. Adjourn until August 24, 2012 at 10:30 a.m. or call of the Chairman, whichever occurs first.

STATE OFFICERS ELECTORAL BOARD
Monday, July 16, 2012

MINUTES

PRESENT:

William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers, Member
Betty J. Coffrin, Member
Judith C. Rice, Member
Bryan A. Schneider, Member
Charles W. Scholz, Member

ABSENT:

Ernest L. Gowen, Member

ALSO PRESENT:

Rupert Borgsmiller, Executive Director
Jim Tenuto, Assistant Executive Director
Steve Sandvoss, General Counsel
Amy Calvin, Administrative Assistant II

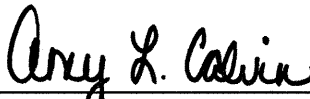
The meeting convened at 10:30 a.m. via videoconference with the Chicago office. Chairman McGuffage, Vice Chairman Smart and Members Byers, Coffrin and Scholz were present in Springfield and Member Schneider was present in Chicago. Member Gowen was absent and Member Schneider held his proxy.

Vice Chairman Smart moved to approve the minutes from the July 9 meeting as presented. Member Coffrin seconded the motion which passed unanimously.

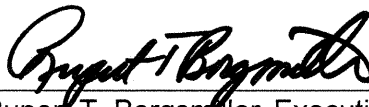
The Chairman presented *Ostendorf & Hocker v. Polites*, 12SOEBGE100, an objection to resolution to fill a vacancy in nomination for the November 6, 2012 General Election. No one was present for the objector and Mike Kasper was present on behalf of the candidate. The General Counsel concurred with the hearing officer recommendation to overrule the objection and the candidates name be certified to the General Election ballot. Vice Chairman Smart moved to accept the recommendation of the General Counsel and hearing officer. Member Rice seconded the motion which passed by roll call vote of 8-0.

With there being no further business before the State Officers Electoral Board, Member Scholz moved to recess until July 23, 2012 at 10:00 a.m. Member Coffrin seconded the motion which passed unanimously. The meeting recessed at 10:40 a.m.

Respectfully submitted,



Amy Calvin, Administrative Assistant II



Rupert T. Borgsmiller, Executive Director

STATE OFFICERS ELECTORAL BOARD

July 23, 2012

MINUTES

PRESENT:

William M. McGuffage, Chairman
Jesse R. Smart, Vice Chairman
Harold D. Byers, Member
Betty J. Coffrin, Member
Ernest L. Gowen, Member
Judith C. Rice, Member
Bryan A. Schneider, Member
Charles W. Scholz, Member

ALSO PRESENT:

James Tenuto, Assistant Executive Director
Steve Sandvoss, General Counsel
Amy Calvin, Administrative Assistant II

The special meeting of the State Officers Electoral Board was called to order at 10:02 a.m. via videoconference with all Members present. Chairman McGuffage and Members Gowen and Rice were present in Chicago, Vice Chairman Smart and Members Byers, Coffrin and Scholz were present in Springfield and Member Schneider was present via teleconference.

The Chairman presented *Imhoff v. Collins*, 12SOEBGE502, an objection to the nominating papers of a candidate appointed to fill a vacancy in nomination for the November 6, 2012 General Election. The General Counsel concurred with the hearing officer recommendation to overrule the objection. Mike Kasper was present on behalf of the objector and Vincent Geisler was present on behalf of the candidate. Neither party took exception to the recommendation. Vice Chairman Smart moved to accept the recommendation of the General Counsel and overrule the objection. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

Consideration of objections to independent and new party candidate nominating petitions for the November 6, 2012 General Election was next and the Chairman presented *Worthy v. Pierce*, 12SOEBGE102. The General Counsel concurred with the hearing officer recommendation to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Mike Kasper was present on behalf of the objector and no one appeared for the candidate. Member Scholz moved to accept the recommendation of the General Counsel and sustain the objection. Member Byers seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Chiles v. Dearing*, 12SOEBGE103 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. John Fogarty was present on behalf of the objector and no one appeared for the candidate. Member Rice moved to accept the recommendation of the General Counsel and sustain the objection. Chairman McGuffage seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Rakers v. McKerrow*, 12SOEBGE104 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. John Fogarty was present on behalf of the objector and no one appeared for the candidate. Vice Chairman Smart moved to

accept the recommendation of the General Counsel and sustain the objection. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Wiss v. Norris*, 12SOEBGE105 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. John Fogarty was present on behalf of the objector and no one appeared for the candidate. Member Byers moved to accept the recommendation of the General Counsel and sustain the objection. Chairman McGuffage seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Tozer v. Mazo*, 12SOEBGE106 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. John Fogarty was present on behalf of the objector and no one appeared for the candidate. Member Rice moved to accept the recommendation of the General Counsel and sustain the objection. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Cushman v. Stufflebeam*, 12SOEBGE107 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Jeff Jurgens was present on behalf of the objector and no one appeared for the candidate. Member Scholz moved to accept the recommendation of the General Counsel and sustain the objection. Chairman McGuffage seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Carruthers v. Percy*, 12SOEBGE110 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. John Fogarty was present on behalf of the objector and no one appeared for the candidate. Vice Chairman Smart moved to accept the recommendation of the General Counsel and sustain the objection. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *DeVivo v. Tucek*, 12SOEBGE504 and Hearing Officer James Tenuto noted that the candidate officially withdrew and the objection was dismissed.

The Chairman presented *Sloan v. Kossack*, 12SOEBGE508 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Mike Kasper was present on behalf of the objector and no one appeared for the candidate. Vice Chairman Smart moved to accept the recommendation of the General Counsel and sustain the objection. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Hartweg v. Kay (Karkusiewicz)*, 12SOEBGE509 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Mike Kasper was present on behalf of the objector and the candidate Mr. Kay appeared pro se. After hearing argument from the candidate, Member Scholz moved to accept the recommendation of the General Counsel and sustain the objection. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Uzzell v. Evans*, 12SOEBGE510 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Mike Kasper was present on behalf of the objector and no one appeared for the candidate. Member Coffrin moved to accept the recommendation of the General Counsel and sustain the objection. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Douglas & Posateri v. Reyes*, 12SOEBGE511 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Mike Kreloff was present on behalf of the objector and candidate Reyes was also present who gave a brief argument. Vice Chairman Smart moved to accept the recommendation of the General Counsel and sustain the objection. Member Byers seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Sherman v. Clymer & Goode*, 12SOEBGE512 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Andy Finko was present on behalf of the objector and no one appeared for the candidate. Member Rice moved to accept the recommendation of the General Counsel and sustain the objection. Member Scholz seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Sherman v. Hawkins*, 12SOEBGE513 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Andy Finko was present on behalf of the objector and candidate Hawkins was also present. After hearing argument from Mr. Hawkins, Member Byers moved to accept the recommendation of the General Counsel and sustain the objection. Vice Chairman Smart seconded the motion which passed by roll call vote of 8-0.

The Chairman presented *Sherman v. Anderson & Boyd*, 12SOEBGE514 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Andy Finko was present on behalf of the objector and no one appeared for the candidate. Vice Chairman Smart moved to accept the recommendation of the General Counsel and sustain the objection. Member Byers seconded the motion which passed by roll call vote of 8-0.

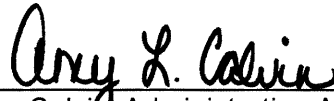
The Chairman presented *Sherman v. Alexander & Mendoza*, 12SOEBGE515 and the General Counsel concurred with the recommendation of the hearing officer to sustain the objection based on the candidate's failure to submit the minimum number of required signatures. Andy Finko was present on behalf of the objector and no one appeared for the candidate. Vice Chairman Smart moved to accept the recommendation of the General Counsel and sustain the objection. Member Rice seconded the motion which passed by roll call vote of 8-0.

A subpoena request from the objector in the *Storm/Eck v. Hartman*, 12SOEBGP506 matter was presented and the General Counsel concurred with the hearing officer recommendation to grant the request for subpoenas to the affiants whose affidavits were attached to the Candidate's motion to dismiss. John Fogarty was present on behalf of the objector and Andy Finko was present on behalf of the candidate. Mr. Fogarty concurred with the recommendation of the hearing officer and noting Mr. Finko's issue regarding the inconvenience to the subpoena's persons, offered to travel to the locations of each affiant for deposition. Mr. Finko said the objector did not establish a good faith

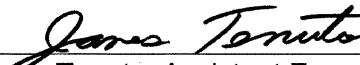
underlying factual basis for the subpoenas and asked that the request be denied. Member Byers moved to deny the request to issue subpoenas and was seconded by Vice Chairman Smart. After discussion, Vice Chairman Smart withdrew his second and moved to place the matter on the August 6 meeting Agenda for consideration. Member Scholz seconded the motion which passed by roll call vote of 7-1 with Member Byers voting in the negative.

With there being no further business before the State Officers Electoral Board, Member Byers moved to recess until August 6, 2012 at 10:00 a.m. Member Scholz seconded the motion which passed unanimously. The meeting recessed at 11:05 a.m.

Respectfully submitted,



Amy Calvin, Administrative Assistant II



James Tenuto, Assistant Executive Director

Direso v. Oberline
12 SOEB GE 101

Candidate: Michael W. Oberline

Office: State Senator, 48th District

Party: Constitution

Objector: Pamela Direso

Attorney For Objector: Matthew Welch

Attorney For Candidate: Pro se

Number of Signatures Required: Not less than 3,000

Number of Signatures Submitted: 3,501

Number of Signatures Objected to: 1,681

Basis of Objection: Objector alleges that the nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete," and "Signer Signed More than Once."

The objector alleges that the Candidate voted a Democratic ballot in the March 2012 Primary Election; therefore, he cannot run as a partisan candidate from any other political party regardless of whether the party is an established or new party.

The objector further alleges that numerous petition sheets contain the ranges of dates of circulation but were notarized prior to the last day of circulation.

Dispositive Motions: Candidate's Motion to Strike the Objector's Petition, Objector's Response to Candidate's Motion to Strike, Candidate's Rebuttal to Objector's Response

Binder Check Necessary: Yes

Hearing Officer: Barbara Goodman

Hearing Officer Findings and Recommendation: Paragraph 10 of the objector's petition alleges that the candidate cannot run as a new party candidate at the General Election because he voted a Democratic ballot at the primary. In his Motion to Strike, candidate correctly points out that there is no restriction in the Election Code that would prohibit him from running as a new party candidate. Since the Election Code contains no prohibition, paragraph 10 of the objector's petition should be stricken.

Because the Objector's Petition was well pled and the allegations regarding the validity of the individual signatures being contested were properly addressed at a records examination, the Motion to Strike the entire Objector's Petition should be denied.

Paragraph 11 of the objector's petition alleges that the last date of circulation specified on certain sheets was after the date of notarization on said sheets thus indicating that the circulator's affidavit did not address all of the signatures on the sheets. Candidate contends that the dates of circulation as indicated are within the proper range

of circulation. Because the records examination resulted in the invalidation of the nominating papers as indicated below, the issue raised in paragraph 11 is moot.

A records examination was conducted on July 18, 2012. Both parties were present at the records exam. The examiners ruled on objections to 1,681 signatures. 1,155 objections were sustained leaving 2,346 valid signatures, which is 654 signatures less than the required 3,000 minimum number of signatures.

Accordingly, the Hearing Officer recommends that the objection be sustained and the name of the candidate not be certified to appear on the 2012 General Election ballot for the office of State Senator for the 48th Legislative District.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

Pamela Direso

Objectors

-v-

Michael W. Oberline

Candidate

12 SOEB GE 101

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on July 9, 2012 and assigned to this Hearing Officer. A case management conference was held on said date. The Objector appeared through counsel Matthew Welch of Odelson and Sterk and the candidate appeared pro se. The parties were given the opportunity to file preliminary motions. The candidate filed a Motion to Strike, the Objector filed a Response to Motion to Strike Objector's Petition and the candidate filed a Rebutal (sic)

to Petitioner-Objector's Response to Motion to Strike.

THE MOTION TO STRIKE

In his Motion to Strike, the Candidate requests that paragraph 10 of the Objector's Petition be stricken. Paragraph 10 of the Objector's Petition alleges that the candidate cannot run as a new party candidate at the General Election because he voted a Democratic ballot at the primary. Candidate correctly points out that there is no restriction in the Election Code that would prohibit him from running as a new party candidate. Inasmuch as the Election Code contains no prohibition, paragraph 10 of the Objector's petition was stricken.

The Candidate also requests that the entire Objector's Petition be stricken because the Objector did not conduct an examination into the validity of the petitions and the Objector was not a concerned voter as alleged in the Objector's Petition. Because the Objector's Petition was well pled and the allegations regarding the validity of the individual signatures being contested are properly addressed at a records examination, the Motion to Strike the entire Objector's Petition was denied.

The Candidate also requests that paragraph 11 of the Objector's Petition be stricken. Paragraph 11 of the Objector's Petition alleges that the last date of circulation specified on certain sheets was after the date of notarization on said sheets thus indicating that the circulator's affidavit did not address all of the signatures on the sheets. Candidate contends that the dates of circulation as indicated are within the proper range of circulation. Because the records examination resulted in the invalidity of the nominating papers as indicated below, the issue raised in paragraph 11 was moot.

THE RECORDS EXAMINATION

In addition to other allegations, the objections concerned allegations regarding the sufficiency of the signatures contained in the nominating papers and required a records examination. A records examination was conducted and the results of the records examination were as follows:

- A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 3,000.
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 3,501.
- C. The number of signatures deemed invalid because of objections sustained in the records examination total 1,155.
- D. The remaining number of signatures deemed valid as a result of the records examination total 2,346.

The results of the records examination established that the candidate had 654 signatures less than the required number of signatures for placement on the ballot. Subsequent to the records examination, the parties stipulated that an additional ten (10) signatures that were

stricken during the records examination as belonging to signers who were not be registered voters were in fact signatures of registered voters. With said stipulation, the total number of valid signatures was increased to 2,356, said number still being less than the statutory minimum. No motions pursuant to Rule 9 of the Board's Rules of Procedure were filed.

RECOMMENDATION

In light of the foregoing, it is my recommendation that the objections of Pamela Direso be **sustained** in conformity with the results of the records examination. It is my further recommendation that the nominating papers of candidate Michael W. Oberline be deemed **invalid** and that the name of candidate Michael W. Oberline for the office of State Senator in the 48th Legislative District **not be** printed on the ballot at the November 6, 2012 General Election.

Respectfully submitted,

Barbara Goodman /s/
Barbara Goodman
Hearing Officer
8/1/12

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE OFFICE OF STATE SENATOR**

Pamela Direso,)	
)	
Petitioner-Objector,)	
)	
vs.)	No.
)	
Michael W. Oberline,)	
)	
Respondent-Candidate.)	

VERIFIED OBJECTOR'S PETITION

INTRODUCTION

Pamela Direso, hereinafter sometimes referred to as the "Objector", states as follows:

1. The Objector resides at 701 N. Charles St., Carlinville, IL 62626, and is a ~~duly qualified, legal and registered voter at that address, within the 48th Legislative District.~~

2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of petitions and nomination papers for the office of State Senator, 48th Legislative District, ("Office") are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") and petitions of Michael W. Oberline, a candidate for State Senator, 48th Legislative District, to be voted at the Election on November 6, 2012 ("election"). The Objector states that the Nomination Papers and Petitions are insufficient in fact and law for the following reasons:

4. Pursuant to state law, nomination papers and petitions for a new political party candidate for State Senator, 48th Legislative District, to be voted for at the Election to be held November 6, 2012, must contain the signatures of not fewer than 3,000 duly qualified, registered and legal voters of said district collected in the manner prescribed by law. In addition, said Nomination Papers and Petitions must truthfully state the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law.

JUL 11 12 30 PM
CLERK OF ELECTIONS

5. The Nomination Papers and Petitions contain the names of persons who did not sign said papers in their own proper persons, and said signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column A, "Signature not genuine signature of purported voter" in violation of the Illinois Election Code.

6. The Nomination Papers contain petition sheets with the names of persons who are not properly registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column B, "Signer not registered at address shown within political district", in violation of the Illinois Election Code.

7. The Nomination Papers contain petition sheets with the names of persons for whom addresses are stated which are not in the 48th Legislative District and such signatures are not valid as not being within the geographical boundaries of said district, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column C, "Signer resides outside District", in violation of the Illinois Election Code.

8. The Nomination Papers contain petitions sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column D, "Signer's address missing or incomplete", in violation of the Illinois Election Code.

9. The Nomination Papers contain the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column E, "Signer Signed More Than Once at Sheet/Line Indicated", in violation of the Illinois Election Code, thereby invalidating at least one of the duplicate signatures.

10. The candidate, Michael W. Oberline, voted in the March, 2012 primary by taking a Democratic ballot. Pursuant to Illinois law, he is committed and locked into the Democratic Party for the March to November, 2012 election cycle and cannot run as a partisan candidate from any other political party whether the political party is an established or new political party in the November, 2012 General Election. His Statement of Candidacy is false and invalid wherein he states he is "legally qualified to hold such office...".

11. That numerous petition sheets contain the range of dates of circulation but were notarized prior to the last day of circulation. (i.e., Sheet one (1) has the circulation dates as March 27, 2012 to June 25, 2012 and was notarized on May 3, 2012). Thus, the circulators had their sheet notarized, swearing to the circulator's affidavit as to those signatures already signed, but did not swear to all of the required items as specified in the circulator's affidavit for those signatures signed after the date of notarization. The sheets objected to are all of the petition

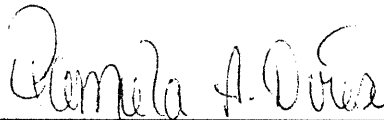
sheets since they are all in violation of the provisions of the Illinois Election Code and established law. All signatures should be invalidated on these sheets since it is impossible to know which signatures were actually sworn to by the circulator, and which were not (those circulated after the notarization date but prior to June 25, 2012).

12. The Nomination Papers contain less than 3,000 validly collected signatures of qualified and duly registered legal voters of the 48th Legislative District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.

13. The Appendix-Recapitulation is incorporated herein and the objections made therein are a part of this Objector's Petition. The headings in the Appendix-Recapitulation in Columns A-G are specific objections.

CONCLUSION

WHEREFORE, the Objector requests a hearing on the objections set forth herein, an examination by the aforesaid Electoral Board of the official records relating to voters in the applicable district, to the extent that such examination is pertinent to any of the matters alleged herein, a ruling that the Nomination Papers are insufficient in law and fact, and a ruling that the name of Michael W. Oberline shall not appear and not be printed on the ballot for election to the office of State Senator, 48th Legislative District, to be voted for at the Election to be held November 6, 2012.



OBJECTOR

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE OFFICE OF STATE SENATOR

Pamela Direso,) Case No.: 12SOEBGE101
Petitioner-Objector,)
and)
Michael W. Oberline,)
Respondent-Candidate.)
_____)

12 JUL 11 PM 1:57
PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS

MOTION TO STRIKE

Respondent-Candidate, Michael W. Oberline, Requests the Board strike Mrs. Direso's Objection Petition in whole or in part for the reasons laid out as follows.

1. The respondent moves that The Board strike the 2nd objection, as to the Candidates qualifications. 10 ILCS 5/7-43, effective date 3/30/2012, a copy of which is attached, **DOES NOT SPEAK TO THE INCLUSION OF A NEW PARTY**. Additionally, the Illinois Electoral Board web site posting dated 4/9/2012, explaining said section, a copy of which is attached, clearly states that voting in the primary election does **NOT PRECLUDE ANYONE FROM RUNNING AS A CANDIDATE OF A NEW PARTY**.

2. Furthermore, Municipal General Elections are held at the primary. Denying someone the right to run in the General Election simply because they voted in the primary is paramount to denying them the right to vote in the Municipal Election if they want to run for higher office under a new party or as an independent. This alone makes the revisions to 10 ILCS 5/7-43 unconstitutional, and therefore unenforceable.

Constitution of the State of Illinois, ARTICLE III, SUFFRAGE AND ELECTIONS, SECTION 1. VOTING QUALIFICATIONS Every United States citizen who has attained the age of 18 or any other voting age required by the United States for voting in State elections and who has been a permanent resident of this State for at least 30 days next preceding any election shall have the right to vote at such election. The General Assembly by law may establish registration requirements and require permanent residence in an election district not to exceed thirty days prior to an election. The General Assembly by law may establish shorter residence requirements for

voting for President and Vice-President of the United States.

3. As to the 3rd objection as stated in paragraph 11 of the objections, the dates on the petitions show the statutory date limits in which petitions may be circulated. The only evidence by the objector proves that this is true. The petitions were circulated between the statutory dates. Therefore, the objection is without merit or fact of law.

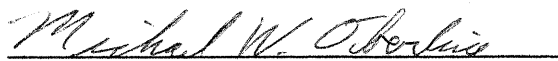
4. The respondent moves that The Board strike the entire objection. Respondent believes and asserts that as of the date of this filing the objector has not looked at or gone over the petitions filed. The objection was filed not on basis of fact but, rather, on information provided by a third, unnamed party. This is evidenced by the Boards own records showing that the Objector never pulled a copy of the petitions. This assertion is further evidenced by her attorney's fee agreement which will show that he was hired to represent her by Ryan Cudney, Political Director for the Republican State Senate campaign organization, and is being paid by the Republican Party. Per Fed.R.Evid 801(c), this is hearsay and not admissible.

5. Respondent believes and assert that Mr. Cudney, who did pull the filling, and who does not live in the district, needed a shill to file the objection. Mrs. Direso is not simply a "concerned voter," as stated in the objection, but rather, the wife Joseph J. Direso, the Republican Alderman for Carlinville Ward 5. Mrs. Direso was duped into participating in a conspiracy to perpetrate a fraud on this Electoral Board. This action alone is cause for dismissing the entire complaint.

PRAYER

For the above stated causes the Respondent prays the Board will strike all or portions of the objection as stated above and dismiss this sham filing, not out of interest in fairness to "qualified" candidates by an individual but, rather, a falsified filling perpetrated by a corrupt organization who is more interested in retaining power and meeting their own self-interest rather than the best interest of the people of Illinois whom the claim to represent.

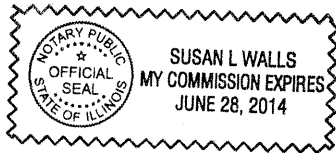
Respectfully submitted,



Michael W. Oberline
Respondent-Candidate

Michael W. Oberline
Signature of Affiant

Signed and sworn to or affirmed by Michael W Oberline before me, on 7-11-2012
Name of Affiant Date Notarized



Susan L Walls
Signature of Notary Public

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE OFFICE OF STATE SENATOR**

Pamela Direso,)	
)	
Petitioner-Objector,)	
)	
vs.)	No. 12 SOEBGE 101
)	
Michael Oberline,)	
)	
Respondent-Candidate.)	

RESPONSE TO MOTION TO STRIKE OBJECTOR'S PETITION

Petitioner-Objector, PAMELA DIRESO ("Objector"), by and through his attorneys, Odelson & Sterk, Ltd., states as follows in Response to Respondent-Candidate MICHAEL OBERLINE's ("Candidate") Motion to Strike Objector's Petition:

I. SECTION 7-44 OF THE ILLINOIS ELECTION CODE PROHIBITS THE CANDIDATE FROM AFFILIATING WITH ANY PARTY OTHER THAN THE DEMOCRATIC PARTY DURING THE 2012 GENERAL ELECTION CYCLE.

Section 7-44 of the Illinois Election Code ("Section 7-44") states, "[a] person who declares his party affiliation with a statewide established political party and requests a primary ballot of such party may nonetheless also declare his affiliation with a political party established only within a political subdivision ***." The maxim *expressio unius est exclusio alterius* controls the construction of Section 7-44 — the mention or enumeration of one or more certain things or modes of action in a statute excludes all other things or modes of action not mentioned. *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill.2d 141 (1997). Specifically, the General Assembly, through Section 7-44, has enumerated only one instance where a person can affiliate with two political parties at the same time, where the person affiliates with a statewide party and a

political subdivision party. In effect, through the application of *expressio unius est exclusio alterius* (the enumeration of one thing in a statute implies the exclusion of all others), Section 7-44 prohibits all other forms of contemporaneous dual party affiliation.

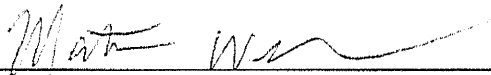
In this case, the Candidate declared himself affiliated to the Democratic Party for the 2012 General Election Cycle when he voted in the 2012 Democratic primary. This declaration “locked” him in to Democratic Party affiliation for the 2012 General Election cycle. *Hossfeld v. Illinois State Bd. of Elections*, 238 Ill.2d 418 (2010), *Cullerton v. Du Page County Officers Electoral Bd.*, 384 Ill.App.3d 989 (2nd Dist. 2008). Since he is affiliated with the Democratic Party, Section 7-44 prohibits him from affiliating with any other political parties, except for political subdivision parties, during the 2012 General Election cycle. As such, there are no set of circumstances under which he can be affiliated with, and be the standard bearer for, the Constitution Party in the 2012 General Election cycle.

Wherefore, for all the foregoing reasons, Candidate’s Motion to Strike Paragraph 10 of the Objector’s Petition must be denied.

II. CONCLUSION

The remaining arguments made by the Candidate in his Motion to Strike are meritless and further are fact-based arguments and not appropriate at this juncture. Wherefore, for all the foregoing reasons, the Objector respectfully requests that Candidate's Motion to Strike be denied and Candidate's name not appear and not be printed on the ballot for election to the office of State Senator, 48th Legislative District, to be voted for at the election to be held November 6, 2012.

Respectfully submitted,



One of Objector's Attorneys

Burton S. Odelson
Matthew M. Welch
Odelson & Sterk, Ltd.
3318 W. 95th St.
Evergreen Park, Illinois 60805
Tel.: (708) 424-5678
Fax: (708) 425-1898

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE OFFICE OF STATE SENATOR

Pamela Direso,) Case No.: 12SOEBGE101
Petitioner-Objector,)
and)
Michael W. Oberline,)
Respondent-Candidate.)

STATE BOARD OF ELECTIONS

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**REBUTAL TO PETITIONER-OBJECTOR'S RESPONSE TO MOTION TO
STRIKE**

Respondent-Candidate, Michael W. Oberline, states the following in answer to Petitioner-Objector's response:

I. The Objector's notion that simply because the code does not specifically rule something out does not mean that it is allowed. Counsel would have us believe that the legislature "just forgot" to mention it when writing, discussing and voting on the law.

Furthermore, counsel refers to **HOSSELD v. ILLINOIS STATE BOARD OF ELECTIONS** to bolster his case. While I applaud his flagrant use of Latin to try and confuse the issue, it would appear counsel never actually read the case. Hossefeld was the objector. Rauschenberger was the candidate. The candidate won, both at the Circuit, Appellate, and Supreme court levels.

HOSSELD v. ILLINOIS STATE BOARD OF ELECTIONS, 238
Ill.2d 418 (2010)

If we accord section 7-43 with the other relevant restriction on primary voting found in section 8-8 of the Election Code, that a "'qualified primary elector' of a party may not sign petitions or be a candidate of more than one party," then we are compelled to find that he has declared his affiliation and is a qualified primary voter of the Republican Party. Therefore, we conclude that Rauschenberger's "Statement of Candidacy" is valid.

Based on the foregoing analysis, we affirm the circuit court's order denying Hossefeld's petition and confirm the Board's decision that Rauschenberger may remain on the Republican primary ballot for February 2, 2010.

II. In his conclusion counsel admits the rest of the motion to strike are fact but, argues that facts "are not appropriate."

CONCLUSION

For all intents and purposes this board is a court. Counsel puts forth two theories. First being he should win because of unwritten code and misstatement of code and currant case law. To which I say, to coin a phrase, 'If the code don't fit you must acquit.'

The second theory relies on the notion that facts have no place in our judicial system. To agree with this logic would be to throw truth, justice, and the American way out the window.

Respectfully submitted,

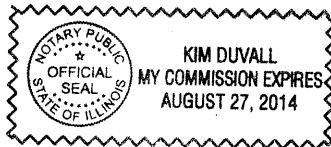
Michael W. Oberline

Michael W. Oberline

Respondent-Candidate

Michael W. Oberline

Signed and sworn to or affirmed by Michael W Oberline before me, on July 16, 2012



Kim Duvall

James v. Gray
12 SOEB GE 109

Candidate: Bob Gray

Office: State Senator, 50th District

Party: Independent

Objector: Daniel James

Attorney For Objector: Matthew Welch

Attorney For Candidate: Kent Gray

Number of Signatures Required: Not less than 3,000

Number of Signatures Submitted: 3,820

Number of Signatures Objected to: 2,089

Basis of Objection: Objector alleges that the nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete," and "Signer Signed More than Once."

Dispositive Motions: None

Binder Check Necessary: Yes

Hearing Officer: Barbara Goodman

Hearing Officer Findings and Recommendation: A records examination was conducted on July 19, 2012. Both parties were present at the records exam. The examiners ruled on objections to 2,089 signatures. 1,006 objections were sustained leaving 2814 valid signatures, which is 186 signatures less than the required 3,000 minimum number of signatures.

Accordingly, the Hearing Officer recommends that the objection be sustained and the name of the candidate not be certified to appear on the 2012 General Election ballot for the office of State Senator for the 50th Legislative District.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

Daniel James)	
)	
Objectors)	
)	
-v-)	12 SOEB GE 109
)	
Bob Gray)	
)	
Candidate)	

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on July 9, 2012 and assigned to this Hearing Officer. A case management conference was held on said date. The Objector appeared through counsel Matthew Welch of Odelson and Sterk and the candidate appeared through counsel Kent Gray. The parties were given the opportunity to file preliminary motions. No preliminary motions were filed.

The objections concerned allegations regarding the sufficiency of the signatures contained in the nominating papers and required a records examination. A records examination was conducted and the results of the records examination were as follows:

- A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 3,000.
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 3,820.
- C. The number of signatures deemed invalid because of objections sustained in the records examination total 1,006.
- D. The remaining number of signatures deemed valid as a result of the records examination total 2,814.

The results of the records examination established that the candidate had 186 signatures less than the required number of signatures for placement on the ballot. Neither party filed motions pursuant to Rule 9 of the Board's Rules of Procedure.

RECOMMENDATION

In light of the foregoing, it is my recommendation that the objections of Daniel James be **sustained** in conformity with the results of the records examination. It is my further recommendation that the nominating papers of candidate Bob Gray be deemed **invalid** and that the name of candidate Bob Gray for the office of State Senator in the 50th Legislative District **not be** printed on the ballot at the November 6, 2012 General Election.

Respectfully submitted,

Barbara Goodman /s/

Barbara Goodman

Hearing Officer

8/1/12

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE OFFICE OF STATE SENATOR

Daniel James,)	
)	
Petitioner-Objector,)	
)	
vs.)	No.
)	
Bob Gray,)	
)	
Respondent-Candidate.)	

VERIFIED OBJECTOR'S PETITION

INTRODUCTION

Daniel James, hereinafter sometimes referred to as the "Objector", states as follows:

1. The Objector resides at 7304 Preston Drive, Springfield, IL 62711, and is a duly qualified, legal and registered voter at that address, within the 50th Legislative District.

2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of petitions and nomination papers for the office of State Senator, 50th Legislative District, ("Office") are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") and petitions of Bob Gray, a candidate for State Senator, 50th Legislative District, to be voted at the Election on November 6, 2012 ("election"). The Objector states that the Nomination Papers and Petitions are insufficient in fact and law for the following reasons:

4. Pursuant to state law, nomination papers and petitions for an Independent candidate for State Senator, 50th Legislative District, to be voted for at the Election to be held November 6, 2012, must contain the signatures of not fewer than 3,000 duly qualified, registered and legal voters of said district collected in the manner prescribed by law. In addition, said Nomination Papers and Petitions must truthfully state the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law.

5. The Nomination Papers and Petitions contain the names of persons who did not sign said papers in their own proper persons, and said signatures are not genuine and are

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forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column A, "Signature not genuine signature of purported voter" in violation of the Illinois Election Code.

6. The Nomination Papers contain petition sheets with the names of persons who are not properly registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column B, "Signer not registered at address shown within political district", in violation of the Illinois Election Code.

7. The Nomination Papers contain petition sheets with the names of persons for whom addresses are stated which are not in the 50th Legislative District and such signatures are not valid as not being within the geographical boundaries of said district, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column C, "Signer resides outside District", in violation of the Illinois Election Code.

8. The Nomination Papers contain petitions sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column D, "Signer's address missing or incomplete", in violation of the Illinois Election Code.

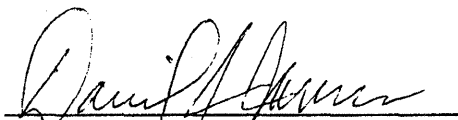
9. The Nomination Papers contain the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column E, "Signer Signed More Than Once at Sheet/Line Indicated", in violation of the Illinois Election Code, thereby invalidating at least one of the duplicate signatures.

10. The Nomination Papers contain less than 3,000 validly collected signatures of qualified and duly registered legal voters of the 50th Legislative District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.

11. The Appendix-Recapitulation is incorporated herein and the objections made therein are a part of this Objector's Petition. The headings in the Appendix-Recapitulation in Columns A-G are specific objections.

CONCLUSION

WHEREFORE, the Objector requests a hearing on the objections set forth herein, an examination by the aforesaid Electoral Board of the official records relating to voters in the applicable district, to the extent that such examination is pertinent to any of the matters alleged herein, a ruling that the Nomination Papers are insufficient in law and fact, and a ruling that the name of Bob Gray shall not appear and not be printed on the ballot for election to the office of State Senator, 50th Legislative District, to be voted for at the Election to be held November 6, 2012.


OBJECTOR

Stanley v. Roman
12 SOEB GE 503

Candidate: Xavier "X" Roman

Office: State Senator, 17th District

Party: Republican

Objector: Deborah Stanley

Attorney For Objector: Michael Kasper, James Nally, Matthew Welch

Attorney For Candidate: Christine Svenson

Number of Signatures Required: Not less than 1000

Number of Signatures Submitted: 1519

Number of Signatures Objected to: 965

Basis of Objection: Objector alleges that the nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," and "Signer's Address Missing or Incomplete."

Dispositive Motions: Candidate's Motion to Strike and Dismiss the Objector's Petition, Objector's Response to Candidate's Motion to Strike and Dismiss, Candidate's Rule 9 Motion

Binder Check Necessary: Yes

Hearing Officer: Barbara Goodman

Hearing Officer Findings and Recommendation: A records examination commenced and was completed on June 26, 2012. Both parties were present at the records exam. The examiners ruled on objections to 965 signatures. 787 objections were sustained leaving 732 valid signatures, which is 268 signatures less than the required 1000 minimum number of signatures.

At the hearing on the candidate's Rule 9 Motion, counsel for the candidate withdrew the Rule 9 Motion and further withdrew the Motion to Strike and Dismiss. As a result of these withdrawals, the signature results from the records examination remained undisputed.

Accordingly, the Hearing Officer recommends that the objection be sustained and the name of the candidate not be certified to appear on the 2012 General Election ballot for the office of State Senator for the 17th Legislative District.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in her Report.

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

Deborah Stanley

Objector

-v-

Xavier "X" Roman

Candidate

12 SOEB GP 503

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on June 19, 2012 and assigned to this Hearing Officer. A case management conference was held on said date. At the first hearing, the Objector appeared through counsel Michael J. Kasper and the candidate appeared through counsel Christine Svenson. The parties were given an opportunity to file preliminary motions. A Motion to Strike and Dismiss was filed by the Candidate. The motion was taken under advisement.

The objections concerned allegations regarding the sufficiency of the signatures contained in the nominating papers and required a records examination. A records examination was conducted and the results were as follows:

- A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 1,000.
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,519.
- C. The number of signatures deemed invalid because of objections sustained in the records examination total 787.
- D. The remaining number of signatures deemed valid as a result of the records examination total 732.

The results of the records examination established that the candidate had 268 signatures less than the required number of signatures for placement on the ballot.

A motion pursuant to Rule 9 of the Board's Rules of Procedure ("Rule 9 Motion") was

filed by the Candidate. No Motion was filed by the Objector. A request for subpoenas was also filed by the Candidate and an Objection to the Issuance of Subpoenas was filed by the Objector. A recommendation regarding the subpoena requests was made by this Hearing Officer and the request was addressed by the Board.

At the hearing on the Candidate's Rule 9 Motion, counsel for candidate withdrew the Rule 9 Motion and further withdrew the Motion to Strike and Dismiss that previously had been taken under advisement. As a result of these withdrawals, the signature tallies from the records examination remained undisputed.

RECOMMENDATION

In light of the foregoing, it is my recommendation that the objections of Deborah Stanley to the nominating papers of Xavier "X" Roman be **sustained** in conformity with the results of the records examination. It is my further recommendation that the nominating papers of

~~candidate Xavier "X" Roman be deemed **invalid** and that the name of candidate Xavier "X"~~

Roman for the office of State Senator in the 17th Legislative District **not be** printed on the ballot at the November 6, 2012 General Election.

Respectfully submitted,

Barbara Goodman /s/
Barbara Goodman
Hearing Officer
7/20/12

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE
OFFICE OF STATE SENATOR FOR THE 17th
LEGISLATIVE DISTRICT OF THE STATE OF ILLINOIS

Deborah Stanley,)
)
Petitioner-Objector,)
)
v.)
)
Xavier "X" Roman,)
)
Respondent-Candidate.)

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STATE BOARD OF ELECTIONS

OBJECTOR'S PETITION

COPY

INTRODUCTION

Deborah Stanley, hereinafter sometimes referred to as the Objector, states as follows:

1. The Objector resides at 8854 S. Crandon, Chicago, Illinois, Zip Code 60617, in the 17th Legislative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address.
2. The Objector's interest in filing this Petition is that of a voter desirous that the laws governing the filing of nomination papers for the office of State Senator for the 17th Legislative District of the State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.

OBJECTIONS

3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of Xavier "X" Roman as a candidate for the office of State Senator for the 17th Legislative District of the State of Illinois ("Office") to be voted for at the General Election on November 6, 2012 ("Election"). The Objector states that the Nomination Papers are insufficient in fact and law for the following reasons:
4. The name of no candidate of the Republican Party appeared on the ballot for nomination to the Office in the General Election. As a result, a vacancy in nomination was created that could be filled within 75 days of the General Election pursuant to Sections 8-17 and 7-61 of the Election Code. Any candidate designated to fill the vacancy in nomination is required to submit a nominating petition signed by a number of voters of the Legislative District equal to the

number required for a candidate to qualify for the ballot in the General Election.

5. Pursuant to State law, nomination papers for the Office to be voted for at the Election must contain the signatures of not fewer than 1000 duly qualified, registered and legal voters of the 17th Legislative District of the State of Illinois collected in the manner prescribed by law. In addition, nomination papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law. The Nomination Papers purport to contain the signatures of in excess of 1000 such voters, and further purport to have been gathered, presented and executed in the manner provided by the Illinois Election Code.

6. The Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the addresses shown opposite their respective names, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading Column a., "Signer Not Registered at Address Shown," in violation of the Illinois Election Code.

7. The Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein under the heading, Column b., "Signer's Signature Not Genuine," in violation of the Illinois Election Code.

8. The Nomination Papers contain petition sheets with the names of persons for whom the addresses stated are not in the 17th Legislative District of the State of Illinois, and such persons are not registered voters in the 17th Legislative District, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column c., "Signer Resides Outside District," in violation of the Illinois Election Code.

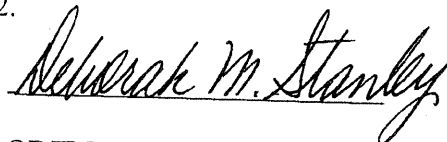
9. The Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column d., "Signer's Address Missing or Incomplete," in violation of the Illinois Election Code.

10. The Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column e., "Signer Signed Petition More Than Once at Sheet Indicated," in violation of the Illinois Election Code.

11. The Nomination Papers contain less than 1000 validly collected signatures of qualified and duly registered legal voters of the 17th Legislative District, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections recorded in the Appendix-Recapitulation attached hereto and incorporated herein.

12. The Appendix-Recapitulation is incorporated herein, and the objections made therein are a part of this Objector's Petition.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) an examination by the aforesaid Electoral Board of the official records relating to voters in the 17th Legislative District, to the extent that such examination is pertinent to any of the matters alleged herein; c) a ruling that the Nomination Papers are insufficient in law and fact, and d) a ruling that the name of Xavier "X" Roman shall not appear and not be printed on the ballot for nomination to the office of State Senator of the 17th Legislative District of the State of Illinois, to be voted for at the General Election to be held November 6, 2012.

A handwritten signature in cursive script, reading "Deborah M. Stanley".

OBJECTOR

Address:
Deborah Stanley
8854 S. Crandon
Chicago, IL 60617

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND
PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR CANDIDATES FOR
THE OFFICE OF SENATE IN THE GENERAL ASSEMBLY FROM THE 17th DISTRICT OF
THE STATE OF ILLINOIS

Deborah Stanley,
Petitioner-Objector,

v.

Xavier Roman,
Respondent-Candidate,

No. 12-SOEB GE 503

Hearing Officer Barbara Goodman

MOTION TO STRIKE AND DISMISS THE OBJECTOR'S PETITION

NOW COMES, the candidate, Xavier Roman, by and through his attorneys, Svenson Law Offices, pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619 and moves to Strike and Dismiss the Objector's Petition, in whole or in part, and in support of this Motion states as follows:

Objector's Petition in its entirety fails to plead its objections in a specific manner, which unduly burdens the Candidate. These conclusory and overly broad allegations are insufficient on their face and must be stricken. Objector's Petition should be dismissed with prejudice.

ARGUMENT

I. Objector's Petition Fails to State the Nature of the Objections With Specificity

Under Illinois law, the objector's petition...shall state fully the nature of the objections." 10 ILCS 5/10-8 Specific grounds alleging legal deficiencies in the petitions must be pled with precision, or the objections are vulnerable to a successful motion to strike. The case of In re Objection of Smith (2004) is illustrative. There the Sangamon County Electoral Board determined that the words "state fully the nature" of the objections demands enough specificity so that a candidate is "adequately apprised of the complaint against him so as to be able to defend himself." The board in Smith interpreted the word "fully" to mean "completely, entirely, copious[ly]" and found that it cannot be satisfied when an objection "leaves the respondent to guess, at best, which signatures are being challenged."

In the much earlier case of Marcus v. Nimrod, 80-COEB-33 (1982), the Cook County Electoral Board was upheld by the Circuit Court of Cook County when it dismissed allegations for "not adequately and sufficiently apprising the candidate and the electoral board of the specifications of such objections making it impossible...to consider and evaluate such objections", aff'd, No. 80 CO" 0315 (Cook Cty.Cir. 1982). Further, that Board has ruled that pleadings generally afford adequate notice or present some credible evidence to sustain a minimal burden of proof. See e.g. Brueder v. Schmidt, No. 89-COEB-TC-03 (1990); Vojik v. Marinaro, No. 89-COEB-TC-07 (1990).

Similarly, several decisions of this Electoral Board have dismissed objections for a failure to "fully state the nature of the objections" so as to "adequately" apprise the candidate of the "nature and specificity of the objections" in order that the candidate might adequately defend. See McCullough v. Hunter, 08-EB-SS-04 (2007) (one page objection); Allysee v. Patterson, 04-EB-RGA-14 (2004); Thomas v. Swiss, 04-EB-WC-046 (2004); Fagus v. Gernhardt, 04-EB-WC-83 (2004).

II. The Requirement for Specificity in an Objection to Candidate's Petitions is Rooted in Requirements for Pleading Common Law Fraud

The reason for a heightened standard of pleadings in the context of Objector's Petition is that Objector's Petition should be seen in its entirety as an allegation of fraud for the simple reason that Objector alleges that the information contained on Candidate's Petitions is fraudulent. Common law fraud demands a "higher standard" when it comes to pleading. *Board of Education of the City of Chicago v. A. C. & S. Inc.*, 131 Ill. 2d 428, 457 (1989). The elements of common law fraud are: (1) a false statement of fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent that the statement induce the plaintiff to act; (4) plaintiff's reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance on the statement. *Board of Education*, 131 Ill. 2d at 452; *Gibbs v. Ernst*, 538 Pa. 193, 210, 647 A.2d 882, 889 (1994). A successful common law fraud complaint must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made. *Board of Education*, 131 Ill. 2d at 457; Pa. R. Civ. P. 1019(b); *Martin v. Lancaster Battery Co.*, 530 Pa. 11, 18, 606 A.2d 444, 448 (1992). Specifically, "[t]he facts which constitute an alleged fraud must be pleaded with sufficient specificity, particularity and certainty to apprise the opposing party of what he is called upon to answer." *A. C. & S. Inc.*, 131 Ill. 2d at 457; *Murphy v. Murphy*, 189 Ill. 360, 366 (1901).

The reason for this higher standard is "to protect against baseless complaints" and to "protect[] defendants from the harm to their reputations that follows charges of serious wrongdoing." *A. C. & S. Inc.*, 131 Ill. 2d at 457, quoting *Helfant v. Louisiana & Southern Life Insurance Co.*, 459 F.Supp. 720, 726 (E.D.N.Y. 1978). Given this higher standard, this court has held that "an allegation of fraud upon information and belief cannot be sustained, unless the facts, upon which the belief is founded, are stated in the pleadings." *Murphy*, 189 Ill. at 366, citing 9 Enc. Pl. & Prac. at 694. The heightened specificity standard required for pleading a complaint for common-law fraud "must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made." *Connick*, 174 Ill. 2d at 496-97. Conclusory allegations are insufficient. *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 771 (2007).

III. Objector's Petition is Replete with Inconsistent and Conflicting Objections

Moreover, the inconsistent and conflicting nature of the objections should invalidate them on their face. Specifically, Objector makes the unsupported claim that some signatures are invalid for the following reason: "Signer not registered at address shown." And yet, with respect to that very same voter, Objector makes a further unsupported allegation that "Signer's signature not genuine" and/or "Signer resides outside District" and/or "Signer's address missing or incomplete."

Thus, the Objector made a determination that not only was the signer not registered at the address listed on the Nominating Petition, but also made an independent determination regarding the genuineness of the signature. Of course, if the signer was not registered at the address listed, then genuineness of the signature is irrelevant.

In addition, in certain instances the Objector made a determination that the signer was not registered at the address listed on the Nominating Petition and then made an independent determination that the signer resides outside the district. Objector purposefully seeks to confuse the distinction between residency and registration. If a signer is not registered, residency is irrelevant.

Finally, the Objector made a determination that the signer was not registered at the address listed on the Nominating Petition and then made an independent determination that the signer's address was missing or incomplete. If a signer's address was incomplete or missing to the extent to make identification of the signer impossible, then a determination of non-registration would also be impossible.

In sum, this Objection fails to identify with any specificity or detail the "incompleteness" or missing nature of address information nor the "deficiency" in the circulator signature and notarization process. The Election Code requires specificity in objections. Moreover, it is the rare situation whereby multiple objections to a single signature may be justified. In this case the magnitude of Objectors "shotgun" approach must be rejected by this Election Board. Objections that do not clearly state the nature of the objection and force Candidate to defend the Nominating Petitions on numerous and inconsistent grounds are not valid Objections and must be stricken.

IV. Objector's Allegations Against the Circulators are Overly Broad and Should be Stricken

Objector's allegations against the circulator seek to throw out all of the signatures on every Petition with in a wholesale manner. Essentially, Objector uses a single allegation against the circulator to allege violation every single relevant provision in the Election Code.

Pursuant to the Code, each page of signatures in a nominating petition must include a circulator statement certifying that the signatures on that page were signed in the circulator's presence and are genuine. 10 ILCS 5/7-10 (West 2010). Where the signature sheets of a nominating petition submitted by a circulator evidence a pattern of fraud, false swearing, and total disregard for the requirements of the Code, the sheets circulated by that individual should be stricken in their entirety. *Canter v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364, 368 (1988). The relevant section of the Election Code reads as follows:

"At the bottom of each sheet of such petition shall be added a circulator's statement, signed by a person 18 years of age or older who is a citizen of the United States, stating the street address or rural route number, as the case may be, as well as the county, city, village or town, and state; certifying that the signatures on that sheet of the petition were signed in his or her presence and are genuine, and that to the best of his or her knowledge and belief the persons so signing were at the time of signing the petition registered voters of the political subdivision or district or precinct or combination of precincts in which the question of public policy is to be submitted and that their respective residences are correctly stated therein." 10 ILCS 5/28-3 (West Supp. 2001).

In the case at bar, without any evidence whatsoever, Petitioner concludes that a circulator was "not a US Citizen" and/or "is not over 18 years old." As is noted in Paragraph II, above, the allegations of fraud on the part of the circulator demands a "higher standard" when it comes to pleading. No such higher standard is pled here.

V. Illinois Law Strongly Supports Ballot Access

This case involves the challenge to a candidacy for the general assembly. The Election Code provides that the candidate's nomination papers are deemed valid until proven otherwise. 10 ILCS 5/10-8. The burden is on an objector in these matters, and for good public policy reason.

The Supreme Court has said, in connection with restrictions on access to the ballot generally:

Restrictions on access to the ballot burden two distinct and fundamental rights, "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast ballots effectively." . . . Access restrictions also implicate the right to vote because absent recourse to referendums, "voters can assert their preferences only through candidates or parties or both." . . . By limiting the choices available to voters, the State impairs the voters' ability to express their political preferences. And for reasons too self-evident to warrant amplification here, we have often reiterated that voting is of the most fundamental significance under our constitutional structure. [Citations omitted.] Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 59 L.Ed.2d 230, 99 S.Ct. 983, 990 (1979).

Illinois courts have also observed in a variety of contexts that there is a dual import to ballot access. In McGuire v. Nogaj, 146 Ill.App.3d 280, 496 N.E.2d 1037, 1041, 99 Ill.Dec. 945 (1st Dist. 1986), the court observed: "The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of the voters." (Quoting Lubin v. Panish, 415 U.S. 709, 39 L.Ed.2d 702, 94 S.Ct. 1315, 1320 (1974).) The McGuire court further noted that this state has a policy in "favor of a candidate's eligibility" (496 N.E.2d at 1039), and the Illinois Supreme Court has observed that the right of access to the ballot is a substantial one that may not lightly be denied. Welch v. Johnson, 147 Ill.2d 40, 588 N.E.2d 1119, 167 Ill.Dec. 989 (1992).

This Objection, at its core, seeks to deprive voters of choice in this November's election because to strike the Candidate from the ballot would mean that the Candidate who benefits from the filing of this Objection would run unopposed in the manner of Bashar Assad and the late dictators Sadaam Hussein, Kim Jong Il, and Moammar Qadafi. In a county long-controlled by a

single political party and in a city where one political party so firmly controls the levers of power that a resident of Chicago could be forgiven for thinking it normal, the Electoral Board should favor ballot access and voter choice to an even higher degree. The combination of heightened scrutiny to Objector's Petition when Objector essentially alleges fraud, and the substantial and fundamental right to ballot access provides this Court with that basis to demand more than conclusory allegations from the Objector. The fundamental right of voters in our democracy to have choices of candidates for seats in the General Assembly elevates ballot access so strongly that the burden of the Objector who seeks to thwart ballot access and voter choice should be very high. It is with these principles that the law must be analyzed and this case considered.

CONCLUSION

WHEREFORE, the candidate, Xavier Roman, prays that this Electoral Board dismiss the Objector's Petition in its entirety. The Candidate further requests that the Objector establish by a tally of the objections that there would remain enough allegations to justify proceeding or considering the results of a Records Examination.

Respectfully submitted,

SVENSON LAW OFFICES


Attorneys for Candidate

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Abbott & Cabay v. Marks
12 SOEB GE 505

Candidate: Doug Marks

Office: State Senate, 33rd District

Party: Libertarian

Objector: James E. Abbott and Kenneth G. Cabay

Attorney For Objector: John Fogarty

Attorney For Candidate: No appearance

Number of Signatures Required: Not less than 3,000

Number of Signatures Submitted: 3,404

Number of Signatures Objected to:

Basis of Objection: Objectors allege that the nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer's Address Missing or Incomplete," and "Signed Petition Twice."

Dispositive Motions: None

Binder Check Necessary: Yes

Hearing Officer: Phil Krasny

Hearing Officer Findings and Recommendation: A records examination was conducted on July 18, 2012. The objectors appeared at the records exam. There was no appearance by the candidate. Before the examination was completed, the examiners ruled on objections to 1,447 signatures. 1,265 objections were sustained leaving 2,139 valid signatures, which is 861 signatures less than the required 3,000 minimum number of signatures. The Hearing Officer suspended the records examination because the candidate fell short of the required 3,000 signatures.

The same day of the records examination, the candidate was advised, via e-mail, that the records examination had been suspended and that a hearing at the Board's Chicago office was scheduled for July 25, 2012 to allow the candidate to appear in person or by counsel and show cause as to why the examination should be completed. The candidate was also advised that his failure to appear would result in the Hearing Officer standing on the results of the records exam, and recommending to the Board that the candidate's name not appear on the ballot. The hearing was held and the candidate did not appear.

Accordingly, based on the results of the records examination, the Hearing Officer recommends that the objection be sustained and the name of the candidate not be certified to appear on the 2012 General Election ballot for the office of State Senator for the 33rd Legislative District.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer for the reasons set forth in his Report.

**BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS**

In the Matter of:

James Abbott and Kenneth Cabay

Objectors

vs.

Doug Marks

Candidate

Board File#: 12 SOEB GP 505

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

I. PROCEDURAL HISTORY

The Candidate, Doug Marks, has filed nominating petitions in support of his placement on the ballot for the office of State Senator for the 33rd Legislative District.

The Objectors, James Abbott and Kenneth Cabay, have filed certain objections to those nominating petitions.

The State Board of Elections, sitting as the State Electoral Board, appointed Philip Krasny as the Hearing Officer to conduct a hearing on the objections to the nominating petitions and make recommendations.

A case management conference was held and attended by the Objector's attorney, John Fogarty. No appearance was filed on behalf of the Candidate. However, Mark Agnini, an associate of the Candidate, was present and informed of the procedures that would be followed regarding the challenges to Mr. Mark's nominating petitions. Mr. Agnini was also told to inform Mr. Marks to file an appearance on his own behalf, or have an attorney file an appearance. No appearance has been filed on behalf of the Candidate.

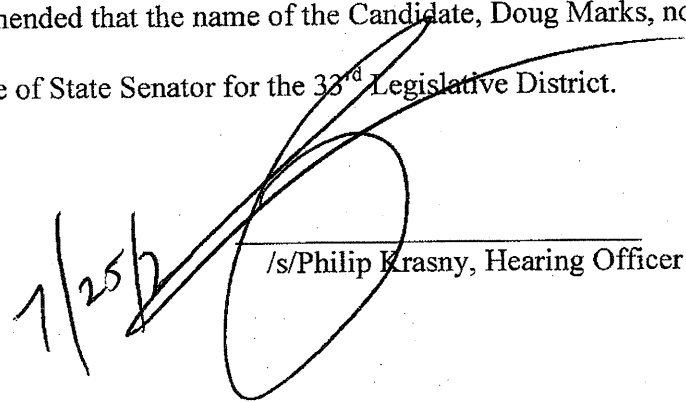
A record review was conducted on July 17, 2012 and was suspended because the Candidate fell short of the required 3,000 valid signatures. (3,404 signatures were submitted by the Candidate. Before the exam was completed, the record examiner sustained 1265 objections, resulting in the Candidate having only 2139 valid signatures, 861 less than the 3,000 required).

On July 18, 2012, the Candidate was advised, via e-mail, that the record exam had been suspended and that a hearing at the State Board of Elections in Chicago was scheduled for Wednesday June 25, 2012 at 10:00 a.m. to allow the Candidate to appear in person or by counsel and present reasons why the record exam should be completed. The Candidate was further advised that should he or his counsel fail to appear, the hearing officer would advise the Electoral Board that the Candidate failed to participate in the process and would recommend to the Electoral Board that the Candidate's name not be placed on the ballot

A hearing was conducted on July 25, 2012 and attended by the Objectors' attorney, John Fogarty. Neither the Candidate or his attorney appeared.

RECOMMENDATIONS

It is recommended that the name of the Candidate, Doug Marks, not appear on the ballot for the office of State Senator for the 33rd Legislative District.

7/25/12

/s/Philip Krasny, Hearing Officer

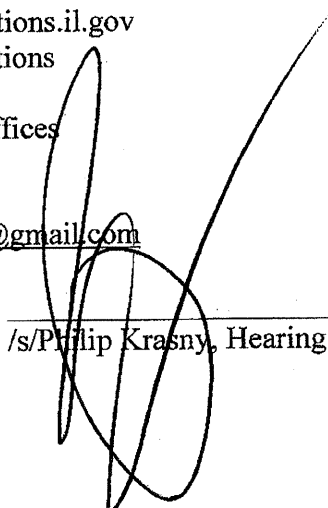
CERTIFICATION

The undersigned certifies that on July 25, 2007[✓] the RECOMMENDATIONS OF HEARING OFFICER was forwarded via e-mail to:

Steve Sandervoss at ssandvoss@elections.il.gov
General Counsel State Board of Elections

John Fogarty at John@fogarty law offices
Attorney for Objectors

Doug Marks at DougMarks4_senate@gmail.com
Candidate



/s/Philip Krasny, Hearing Officer

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

IN THE MATTER OF THE OBJECTIONS OF)
JAMES E. ABBOTT AND KENNETH G. CABAY)
TO THE PETITION TO FORM THE LIBERTARIAN)
PARTY WITH DOUG MARKS AS ITS CANDIDATE) NO.
FOR ELECTION TO THE OFFICE OF STATE)
SENATOR IN THE 33RD LEGISLATIVE DISTRICT)
OF THE STATE OF ILLINOIS)

VERIFIED OBJECTORS' PETITION

NOW COME JAMES E. ABBOTT and KENNETH G. CABAY, hereinafter collectively referred to as "Objectors", and respectfully represent that Objector James E. Abbott resides in Kane County in the 33rd Legislative District of the State of Illinois, at 201 North Lincoln Avenue, Geneva, Illinois, Zip Code 60134, and that Objector KENNETH G. CABAY resides in McHenry County in the 33rd Legislative District of the State of Illinois at 4700 Coyote Lakes Circle, Lake in the Hills, Illinois, Zip Code 60156, and that each of your Objectors is a registered, qualified legal voter at his respective residence address and that your Objectors' interest in filing this objection is that of citizens desirous of seeing that the election laws of the State of Illinois governing the filing of petitions to form new political parties in the 33rd Legislative District are fully and properly complied with and that only those candidates who properly comply therewith have their names printed upon the ballot as candidates for the said nominations and therefore your Objectors make the following objections to the petition to form a new political party to be known as the LIBERTARIAN PARTY and to place on the ballot the name of DOUG MARKS as its candidate for the office of State Senator for the 33rd Legislative District for election to be voted upon at the General Election to be held on November 6, 2012 (hereinafter sometimes referred to as "the petition"), and files the same herewith and states that the petition is insufficient in law and in fact for the following reasons:

STATE BOARD OF ELECTIONS

2012 JUL -2 AM 9:28

CHICAGO

1. Your Objectors state that petitions to form new parties for the General Election in the 33rd Legislative District require the signatures of not less than 3,000 duly registered voters residing in the 33rd Legislative District.

2. Your Objectors further state that the petition contains the names of persons who did not sign the petition in their own proper person, and said signatures are not genuine and are forgeries, as set forth specifically in the Appendix-Recapitulation, under the heading, Column (A) designated, "Signer's Signature Not Genuine", attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

3. Your Objectors further state that the petition contains petition sheets with the names of persons who are not registered voters at the addresses shown opposite their respective names, as set forth specifically in the Appendix-Recapitulation under the heading, Column (B), designated "Signer Not Registered at Address Shown", attached hereto and made a part hereof, ~~all of said signatures being in violation of the statutes in such cases made and~~ provided.

4. Your Objectors further state that the petition contains the names of numerous persons who are not in fact residents of the 33rd Legislative District as shown by the address they have given on the petition, as set forth specifically in the Appendix-Recapitulation, under the heading, Column (C), "Signer Resides Outside District", attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

5. Your Objectors further state that the petition contains signatures of various persons who have not set forth their residence address opposite their names, or who have set forth an address so incomplete as to be meaningless, and their signatures are therefore invalid, as set forth specifically in the Appendix-Recapitulation under the heading, Column (D), designated "Signer's Address Missing or Incomplete", attached hereto and made a part hereof, all of said signatures being in violation of statutes in such cases made and provided.

6. Your Objectors further state that the petition contains sheets with the signatures of persons who have signed the nominating petition more than once, and such duplicate signatures


are invalid, as is set forth specifically in the Appendix-Recapitulation under the heading, Column (E), designated "Signer Signed Petition More than Once at Sheet/Line Indicated", attached hereto and made a part hereof, all of said duplicate signatures being in violation of statutes in such cases made and provided.

7. Your Objectors further state that the petition contains sheets with the "signatures" of persons which are not signed but are rather printed, and said signatures are not the statutorily required signatures, as is set forth specifically in the Appendix-Recapitulation under the heading, Column (F), designated "Signer's Name Printed and Not Signed", attached hereto and made a part hereof, all of said signatures being in violation of statutes in such cases made and provided.

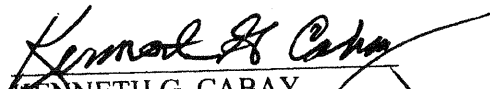
8. Your Objectors further state that the Appendix-Recapitulation is incorporated herein and the objections made therein are a part of this Verified Objectors' Petition. If there are no objections listed in a column or category, that column or category can be ignored.

9. ~~Your Objectors further state that the purported petition herein contested purports~~ to consist of various sheets purportedly containing the signatures of more than 3,000 qualified voters of the 33rd Legislative District. The individual objections cited herein with specificity reduce the number of valid signatures to a number below the statutory minimum of 3,000.

WHEREFORE, YOUR Objectors pray that the petition to form a new political party to be known as the LIBERTARIAN PARTY and to place on the ballot the name of DOUG MARKS as its candidate for the office of State Senator for the 33rd Legislative District for election to be voted upon at the General Election to be held on November 6, 2012 be declared by this Honorable Board to be insufficient and not in compliance with the laws of the State of Illinois and that the name of the purported new party and the Candidate's name be stricken and that this Honorable Board enter its decision declaring that the petition to form a new political party to be known as the LIBERTARIAN PARTY and to place on the ballot the name of DOUG MARKS as its candidate for the office of State Senator for the 33rd Legislative District **BE NOT PRINTED** upon the **OFFICIAL BALLOT** for the General Election to be held on November 6, 2012.



JAMES E. ABBOTT


KENNETH G. CABAY

McSweeney v. Beaubien
12 SOEB GE 507

Candidate: Dee Beaubien

Office: State Representative, 52nd District

Party: Independent

Objector: David McSweeney

Attorney For Objector: Richard Means and John Fogarty

Attorney For Candidate: Michael Kasper

Number of Signatures Required: Not less than 1,500

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Objector alleges that the candidate is not qualified to be an independent candidate for the office she seeks because, during the current election cycle, she declared herself to be a member of and affiliated with the Republican Party and participated in the Republican nominating process by signing Republican Party nominating petitions. Objector alleges that the candidate's statement of candidacy contains a false statement because she is not qualified to be elected as an Independent candidate.

Dispositive Motions: Candidate's Motion to Strike and Dismiss the Objector's Petition, Objector's Response to Motion to Strike and Dismiss, Candidate's Reply Memorandum Regarding the Candidate's Motion to Strike and Dismiss

Binder Check Necessary: No

Hearing Officer: Barb Goodman

Hearing Officer Findings and Recommendation: The Hearing Officer found that, while the cases cited by the objector may be instructive to the general issue of party switching, the objector was unable to point to any specific provision that would prohibit the candidate from running as an independent candidate simply because she signed a Republican nominating petition. The Hearing Officer noted that the objector's argument requires the Electoral Board to extrapolate from cases involving other acts of party switching to impose a prohibition against signing for an established party and running as an independent candidate. The Hearing Officer agreed with the candidate that the legislature had the opportunity to create such a prohibition, particularly in light of its most recent amendment to Section 7-43, and chose not to do so. The Hearing Officer concludes that imposing such a prohibition involves writing new law and to do what the objector requests, namely, to have the Electoral Board impose a ballot restriction where none currently exists, is simply outside the scope of the Electoral Board's authority.

Accordingly, the Hearing Officer recommends that the Candidate's Motion to Strike and Dismiss be granted and that the objections of David McSweeney be dismissed. The Hearing Officer further recommends that the candidate's nominating papers be deemed valid and the name of candidate be printed on the ballot at the 2012 General Election.

Recommendation of the General Counsel: I concur with the recommendation of the Hearing Officer based on the reasoning contained in her Report.

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

David McSweeney)	
)	
Objectors)	
)	
-v-)	12 SOEB GE 507
)	
Dee Beaubien)	
)	
Candidate)	

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on July 9, 2012 and assigned to this Hearing Officer. A case management conference was held on said date. The Objector appeared through counsel Richard Means and John Fogarty and the candidate appeared through counsel Michael Kasper. The parties were given the opportunity to file preliminary motions. The Candidate filed a *Motion to Strike and Dismiss*. The Objector filed *Objector's Response to Candidate's Motion to Strike and Dismiss Objector's Petition*. The Candidate filed a *Reply Memorandum Regarding the Candidate's Motion to Strike and Dismiss*.

The Motion to Strike and Dismiss addresses the sole issue raised in the Objector's Petition. Specifically, the Objector's Petition alleges that a candidate is not *qualified* to run as an independent candidate at the general election if the candidate has *signed* the petition of an established party candidate seeking nomination at the primary election within the same election cycle. In this case, the stipulated facts are that 1) the candidate signed a petition for a Republican candidate for State's Attorney who ran at the General Primary, 2) the candidate voted a non-partisan ballot at said primary and 3) the candidate is now seeking to be an independent candidate at the General Election for the office of Representative in the General Assembly.

In her Motion to Strike, the Candidate points out that the Objector framed his objections on the basis of the qualifications of the candidate. Candidate argues that the qualifications to run for state representative are set forth in the constitution and that the qualifications may not be added to or changed by the legislature. The qualifications involve age, citizenship and residency.

Candidate contends that because the Objector raised no issue regarding the actual qualifications of the candidate, the Objections should be dismissed. As the Candidate points out, “One of the most well-settled tenants of constitutional law is that where the Constitution sets forth the qualifications for an office, the legislature may not impose any additional eligibility criteria on that office. *Maddux v. Blagojevich*, 233 Ill.2d 508, 522, 911 N.E.2d 979, 988 (2009); *O’Brien v. White*, 219 Ill. 2d 86, 99, 846 N.E.2d 116, 124 (2006); *Thies v. State Board of Elections*, 124 Ill. 2d 317, 325, 529 N.E. 2d 565, 569 (1988).” (Candidate’s Motion to Strike and Dismiss, page 3).

Candidate further points out that Section 7-43(f) which was amended this year, contains a prohibition against **voting** for an established party candidate and then running as an independent candidate. However, it contains no prohibition against **signing** for an established party candidate and then running as an independent. Candidate argues that if the legislature wanted to create such a prohibition as Objector has urged here, it would have done so.

Objector points out that there are other sections of the Election Code that address party switching and that those sections and the cases interpreting them are controlling here. For example, Sections 10-3 and 10-4 of the Election prohibit **circulating** for an established party and **circulating** for an independent or a new party in the same election cycle and that numerous cases support the idea that the failure to disaffiliate from a party within the same election cycle has been held to be a permissible prohibition against party switching. *Storer v Brown* 415 U.S. 724 (1974) and *Citizens for John W. Moore Party v Board of Election commissioner of the City of Chicago*, 794 F.2d 1254 (1986).

Objector further contends that there are a number of recent party switching cases that have upheld the constitutionality of party switching prohibitions and that the rationale used in those cases are instructive in the instant case. For example, in *Cullerton v DuPage County*

Officers Election Board 384 Ill. Ap. 3d 989 (2nd Dist 2008), a person who **voted** in a Republican primary could not then run to fill a vacancy as a Democratic candidate.¹

Objector also relies on *Rosensweig v Illinois State Board of Election* , 409 Ill. App. 3d 176 (1st Dist 2011) in which a candidate first signed a Democratic primary petition but then sought to run for the same office at the same primary as a Republican. The Court determined that such action was not permitted in light of Section 7-10 and Section 8-8 of the Election Code which prohibit signing for an established party and switching to another established party at the same primary.

Although Candidate does not concede that the cases cited by the Objector are relevant, even if relevant, she points out the legislature has addressed the issue by amending Section 7-43(f) to prohibit **voting** in an established party primary and then running as an independent. According to the Candidate, the fact that the legislature did not impose the prohibition suggested by the Objector here is proof that any further question regarding party switching has been addressed and resolved by the legislature.

DISCUSSION

Both parties provided an exhaustive and informative overview concerning party switching provisions, the cases interpreting the provisions and the rationale behind the various acceptable prohibitions. However, in my opinion, the decision ultimately depends on one fact. Specifically, while the cases cited by the Objector may be instructive to the general issue of party switching, Objector is unable to point to any specific provision that would prohibit the candidate from running as an independent candidate here. Objector's argument requires that the Electoral Board extrapolate from cases involving other acts of party switching in order to impose a

¹ The Objector also points out that the scope of *Cullerton* was narrowed by *Hossfeld v Illinois State Board of Elections* 238 Ill 2d 418 (2010) which clarified that the prohibition had to be within the same election cycle.

prohibition against *signing* for an established party and running as an independent candidate as is the case here. In my opinion, the Electoral Board is simply without the authority to do so and, as the Candidate contends, the legislature had the opportunity to provide such a prohibition, particularly in light of its most recent amendment to Section 7-43, and chose not to do so. This case does not present the issue of interpreting the applicability of a statute directly on point or interpreting the applicability of already existing case law. It involves writing new law and to do what the Objector requests, namely, to have the Electoral Board impose a ballot restriction where none currently exists, is simply outside the scope of the Electoral Board's authority.

RECOMMENDATION

In light of the foregoing, it is my recommendation that the Candidate's Motion to Strike and Dismiss be granted and that the objections of David McSweeney be dismissed. It is my further recommendation that the nominating papers of candidate Dee Beaubien be deemed **valid** and that the name of candidate Dee Beaubien for the office of Representative in the General Assembly for the 52nd Representative District **be** printed on the ballot at the November 6, 2012 General Election.

Respectfully submitted,

Barbara Goodman /s/
Barbara Goodman
Hearing Officer
8/2/12

State of Illinois)
) SS.
County of Cook)

CHICAGO
2012 JUL -2 PM 1:12
STATE BOARD OF ELECTIONS

**Before the Duly Constituted Electoral Board for the Hearing and
Passing Upon of Objections to Nomination Papers of Independent
Candidates for Election to the Office of Representative in the General
Assembly for the 52nd Representative District of the State of Illinois**

**Objections of David McSweeney to the Nomination Papers of Dee
Beaubien for the Republican Party election for the Office of
Representative in the General Assembly for the 52nd Representative
District of the State of Illinois, to be voted for at the General Election
to be Held on November 6, 2012**

Verified Objector's Petition

David McSweeney, residing and registered to vote at 8 Hubbell Court, in the Village of Barrington Hills, County of Cook, State of Illinois (hereinafter referred to as "Objector") states that the Objector's address is as stated, that the Objector is a legal voter of the 52nd Representative District of the State of Illinois, and that the Objector's interest in filing the following objections is that of a citizen desirous of seeing that the election laws governing the filing of nomination papers for the election of the Republican Party for the office of Representative in the General Assembly for the 52nd Representative District of the State of Illinois, are properly complied with. Therefore, the Objector makes the following objections to the nomination papers of

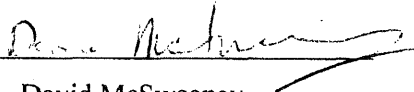
Dee Beaubien as an Independent candidate for election to the office of Representative in the General Assembly for the 52nd Representative District of the State of Illinois, to be voted for at the General Election to be held on November 6, 2012 (hereinafter referred to as the "Nomination Papers").

The Objector states that said Nomination Papers are insufficient in fact and law for the following reasons:

1. Pursuant to Illinois law, nomination papers for Independent candidates for the office of Representative in the General Assembly for the 52nd Representative District of the State of Illinois, to be voted for at the General Election to be held on November 6, 2012, must contain the true signatures of not fewer than 1500 qualified and duly registered legal voters residing in the 52nd Representative District of the State of Illinois. In addition, said Nomination Papers must truthfully allege that the candidate is qualified for the office she seeks, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise must be executed in the form provided by law. The Nomination Papers herein purport to contain in excess of 1500 true signatures of such voters, and further purport to truthfully allege that the candidate is qualified for the office she seeks and purport to have been gathered, presented and executed in the manner required by the Illinois Election Code.
2. The candidate herein, Dee Beaubien, is not qualified under Illinois law to be an Independent candidate for the office she seeks because, during the current election cycle, she declared herself to be a member of and affiliated with the Republican Party and participated in the Republican nominating process by signing Republican Party nominating petitions. Appendix A. *attached hereto and incorporated herein by reference.*
3. The Nomination Papers herein contain a Statement of Candidacy which contains a false statement, *to wit.*: "that I am a candidate for election to the office of Representative in the General Assembly in the 52nd Representative District of the State of Illinois . . . and that I am legally qualified . . . to hold such office . . ." when, in fact, Dee Beaubien is not qualified to hold such office because she is not qualified to be elected to such office as an Independent candidate during the current election cycle said false statement being in violation of the Illinois Election Code.

4. Because the candidate is not qualified to seek election to the office of Representative in the General Assembly as an Independent candidate, the Nomination Papers are invalid in their entirety.
5. Because the Nomination Papers contain a Statement of Candidacy which contains at least one material false statement, which false statement is, itself, contrary to and violative of Illinois law, the Nomination Papers are invalid in their entirety.

Wherefore, the Objector requests a hearing on the Objections set forth herein, an examination by the aforesaid Electoral Board (or its duly appointed agent or agents) of the official precinct registers and binders relating to voters in the 52nd Representative District of the State of Illinois, (to the extent that such examination is pertinent to any of the matters alleged herein), a ruling that the Nomination Papers are insufficient in law and fact, and a ruling that the name of Dee Beaubien **shall not appear** on the ballot for the election to the office of Representative in the General Assembly for the 52nd Representative District of the State of Illinois, to be voted for at the General Election to be held on November 6, 2012.



David McSweeney

Objector

McSweeney,)	
)	
Petitioner-Objector,)	
)	
v.)	No. 12-SOEB-GE-507
)	
Beaubien,)	
)	
Respondent-Candidate.)	

NOW COMES, Candidate, by and through his attorney, Michael J. Kasper, and moves to strike and dismiss the Objector's Petition and in support thereof states as follows:

The Candidate has filed nominating petitions signed by thousands of registered voters of the 52nd Representative District supporting her independent candidacy for the office of Representative in the General Assembly. The Objector, the Republican nominee for the same office, does not dispute that Ms. Beaubien has many, many more valid signatures than minimum needed to qualify for the ballot. Instead, the Objector contends that Ms. Beaubien should be denied a place on the ballot, and the voters of the district should be denied an election contest of any kind (there is no Democratic nominee) because, about nine months ago, Ms. Beaubien exercised her First Amendment rights of political expression and association by signing two partisan nominating petitions for candidates seeking local office in her community in the March 20, 2102 primary election.

The facts of the case are not contested. Last fall, Ms. Beaubien signed the nominating petition of Brian Winter, who was a candidate seeking the Republican nomination for the office of Lake County State's Attorney, and around the same time, she

signed a petition for Nick Sauer as a candidate for the Republican nomination for a position on the Lake County Board. In the March 20, 2012 Primary Election, Ms. Beaubien did not vote in a partisan primary, but instead voted a non-partisan ballot. Ms. Beaubien circulate petitions to run as an Independent Candidate for the office of Representative in the General Assembly from the 52nd District; a seat that had been, for many years, occupied by her recently deceased husband, who passed away while in office.

II. Argument.

A. The Objector's Petition Should Be Dismissed Because It Fails to Allege a Violation of Any Law Governing the Qualifications for the Office.

The Objector's Petition contains only one allegation – that the Candidate “is not qualified” to hold the office she seeks. Obj.Pet., ¶ 2, 3, and 4. Objector asserts that the Candidate is “not qualified” for the office because she “declared herself to be a member of and affiliated with the Republican Party... by signing Republican Party nominating petitions.” *Id.* at ¶ 2. The Objector cites no law supporting this contention. Indeed, Objector completely fails to inform the Board or the Candidate precisely (or even vaguely, for that matter) which provision of which law he believes has been violated. As a result, the Objector's Petition does not satisfy the simple pleading requirement of Section 10-8 of the Election Code that the objection must “state fully the nature of the objection...” 10 ILCS 5/10-8. As a result of these vague and unspecific allegations, the Candidate is left to guess about the charges she is to defend and the laws she is alleged to have violated.

Taken on its face, the Objector's Petition alleges only (and in three separate places) that the Candidate is "not qualified" for the office. That objection fails as a matter of law for the simple reason that whether a person did or did not sign a petition has nothing to do with whether he or she possesses the necessary qualifications for elective office. The office of Representative in the General Assembly is created by the Illinois Constitution. Ill.Const.1970, Art. IV, § 2(b). The Constitution next contains a "qualifications clause" that sets out the *qualifications* for offices in the General Assembly (including the one at issue here), as follows:

To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent.

Id. at 2(c). Thus, the three qualifications for the office are (1) citizenship; (2) age; and (3)

residency. The Objector's Petition must be dismissed because it is entirely premised upon the Objector's contention that the Candidate is "not qualified" but fails to allege that she lacks one of the three necessary qualifications for the office. In short, the Objector's Petition is premised upon the incorrect assertion that a person must satisfy more than the three qualifications contained in the Constitution in order to be "qualified" for the office. In Objector's view, in order to be "qualified" for the office, and candidate must meet a fourth, unwritten qualification – status as a non-primary petition signer. In other words, Objector would rewrite the Illinois Constitution to provide:

To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent, *and who, if an independent candidate, did not sign a partisan nominating petition in the preceding primary election.*

There cannot really be any serious contention that the Candidate is "qualified" for the

office. Because the Objector has chosen to base his entire complaint upon the incorrect assertion that she is not “qualified”, it must be dismissed. One of the most well-settled tenants of constitutional law is that where the Constitution sets forth the qualifications for an office, the legislature may not impose any additional eligibility criteria on that office. *Maddux v. Blagojevich*, 233 Ill.2d 508, 522, 911 N.E.2d 979, 988 (2009); *O’Brien v. White*, 219 Ill. 2d 86, 99, 846 N.E.2d 116, 124 (2006); *Thies v. State Board of Elections*, 124 Ill. 2d 317, 325, 529 N.E. 2d 565, 569 (1988). This is true not only in Illinois, but at the federal level as well. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S.Ct. 1842 (1995).

To be sure, a person seeking to be an independent candidate must take certain procedural steps to secure a position on the general election ballot. These procedural steps are contained in Article 10 of the Election Code, and include submitting a nomination petition, a Statement of Candidacy and a Statement of Economic Interests. 10 ILCS 5/10-3; 10-5. Again, the Objector here does not allege that the Candidate has failed to comply with any of these procedural steps necessary to gain ballot access. Moreover, these procedural requirements are not “qualifications” – for example, a person submitting an insufficient number of signatures could nonetheless be “qualified” for the office. In this case, the Objector does not allege that the Candidate does not satisfy any of the qualifications for the office. As a result, their contention that the Candidate is nonetheless somehow not qualified is baseless and, frankly, completely illogical. The Objector’s argument, the best the Candidate can make of it, seems to be: “We concede she meets the qualifications, but she is not qualified.”

Because the Objector chose to couch his Objector’s Petition solely upon the

allegation that she is “not qualified,” it must be dismissed.

B. The Statutory Prohibitions on Party Switching are Inapplicable.

1. Nothing in Illinois Law Precludes a Person Who Signed a Primary Nominating Petition from Running as an Independent Candidate.

Despite the fact that there is nothing at all in the Objector’s Petition about it, at the initial conference regarding this matter, counsel for the Objector described this matter as a “party switching case.” This is, of course, interesting because the Candidate here has no political party, but is instead an independent candidate. Nonetheless, the statutory provisions regulating party switching have no applicability here. Governor Quinn recently signed legislation amending the Election Code regarding party affiliation.

Section 7-43 provides:

A person (i) who filed a statement of candidacy for a partisan office as a qualified primary voter of an established political party or (ii) who voted the ballot of an established political party at a general primary election may not file a statement of candidacy as a candidate of a different established political party or as an independent candidate for a partisan office to be filled at the general election immediately following the general primary for which the person filed the statement or voted the ballot. A person may file a statement of candidacy for a partisan office as a qualified primary voter of an established political party regardless of any prior filing of candidacy for a partisan office or voting the ballot of an established political party at any prior election.

10 ILCS 5/7-43; P.A. 97-681, eff. 3-30-12. This provision is most pertinent here not because of what it says, but because of what it does not say. Under this law, a person who either (1) submitted a statement of candidacy in a partisan primary; or (2) who voted in a partisan primary election may not legally file to run as an independent candidate at the immediately ensuing general election. This section says nothing about signing a partisan petition. Had the General Assembly wanted to impose such a restriction, they certainly could have done so, but they did not.

This enactment followed two relatively recent court decisions regarding candidate eligibility as partisan candidates following earlier voting behavior. First, in *Cullerton v. DuPage County Officers Electoral Board*, 384 Ill.App.3d 989, 894 N.E.2d 774 (2nd Dist. 2008), when no Democratic candidate appeared on the primary ballot, the Democratic Party appointed Thomas Cullerton to run as the Democratic nominee for the State Senate in the November, 2008 General Election. *Cullerton*, 384 Ill.App.3d at 991, 894 N.E.2d at 775. A challenge to Cullerton's candidacy asserted that he could not run as a Democratic candidate because he had voted as a Republican in the immediately preceding primary election. *Cullerton*, 384 Ill.App.3d at 990, 894 N.E.2d at 775. The Second District Appellate Court ruled that Cullerton could not run as a Democratic candidate in the 2008 General Election because he had voted Republican in the 2008 Primary Election.

~~*Cullerton*, 384 Ill.App.3d at 998, 894 N.E.2d at 775.~~

The Supreme Court next took up the issue in *Hossfeld v. Illinois State Board of Elections*, 238 Ill.2d 418 (2010). The case involved the eligibility of Steve Rauschenberger to run as a Republican candidate in the 2010 Primary Election for the office of State Senator from the 22nd Legislative District. *Id.* The gist of the Objector's Petition was that Rauschenberger was ineligible to run as a Republican candidate in the 2010 Primary Election because he had voted as a Democrat in the 2009 Primary Election. *Id.* In declaring Rauschenberger eligible, the Supreme Court declared "no vestige of the former party-switching rule remains in the statute" and that "the Election Code no longer contains express time limitations on party-switching..." *Id.*

Both *Cullerton* and *Hossfeld* dealt with party-switching from one established political party to another (Republican to Democrat in *Cullerton*, and the reverse in

Hossfeld) and, both were based upon prior *voting* behavior. That is why the new statute deals with prior voting behavior and not prior petition signing behavior.

Indeed, there has also been a recent decision regarding party-switching in the petition signing area. *Rosenzweig v. Illinois State Bd. of Elections*, 409 Ill.App.3d 176 (1st Dist. 2011). In *Rosenzweig*, the Court invalidated the candidacy where a candidate signed nominating petitions for a Democrat running for the same office in the 2010 Primary Election, and then submitted a Statement of Candidacy as a Republican for the same office in the same *primary* election. *Id.* In reaching its conclusion, the Court noted that the candidate violated Section 8-8 because she first signed a nominating petition for a Democratic candidate, and then attempted to run as a candidate for the Republican Party in the same election. *Id.* at 181.

~~The applicable provision of Section 8-8 provides: “A ‘qualified primary elector’~~ of a party may not sign petitions for or be a candidate in the primary of more than one party.” 10 ILCS 5/8-8. This provision obviously has no applicability in this case for two reasons. First, by its plain language this provision is limited to those seeking to act within “more than one party.” Here, the candidate is not covered by this provision because she is not acting under the banner of any political party – she is an independent.

Second, this provision appears in Article 8 of the Election Code, which pertains only to established political party’s nominating candidates for the General Assembly. 10 ILCS 5/8-1. As an independent candidate, Ms. Beaubien’s nomination is governed not by Article 8 of the Election Code, but by Article 10. Article 10, of course, contains no provision prohibiting a person from signing a partisan petition and then seeking to run as an independent candidate. Interestingly, Article 10 is not, however, silent about petition

signers. In the Section governing nominating petitions by independent candidates, Article 10 specifies that: “Each voter signing a nomination paper shall add to his signature his place of residence, and each voter may subscribe to one nomination for such office to be filled, and no more.” 10 ILCS 5/10-3.

This statutory framework makes perfect sense. In the primary election, each voter may participate in one established party’s nomination process, but not both. 10 ILCS 5/8-8; *see also* 10 ILCS 5/7-10. In the general election, a person may nominate one independent candidate to each office to be filled, but not more. 10 ILCS 5/10-3. This serves the State’s important interest, in the area of primary elections, to prevent party raiding, whereby one party would intentionally try to nominate weak candidates in the other party’s primary. *Rosario v. Rockefeller*, 410 U.S. 752, 93 S.Ct. 1245 (1973)(the State “has the right to prevent distortion of the electoral process by the device of ‘party raiding,’ the organized switching of blocks of voters from one party to another...”); *see also Citizens for John W. Moore Party v. Board of Elec. Comm’rs of the City of Chicago*, 794 F.2d 1254 (1986)(upholding statute preventing a person from circulating petitions for more than one party on anti-party raiding grounds.) In the general election context, the same logic applies. The limitation on signing for only one independent candidate per office helps prevent candidates from putting up “straw” candidates designed solely to siphon votes away from the true opponent.

None of that logic applies here, where the Candidate signed a nominating petition for local candidates in a partisan primary election, and then nearly a year later, seeks to run for State office as an independent candidate. That is why the Election Code contains

no such prohibition. The Candidate did not violate a single provision of the Election Code. The Objection should be dismissed.

2. Illinois Long Ago Repealed Any Party-Switching Restrictions Applicable to Petition Signers.

The Illinois Election Code once imposed restrictions on party-switching by three groups of political actors: voters, petition signers, and candidates. Ill. Rev. Stat. 1971, ch. 46, par. 7-43(d); Ill. Rev. Stat. 1971, ch. 46, par. 7-10. Regarding voters, Section 43(d) of the Election Code prohibited a person from voting in a political party's primary election if he or she had voted in another party's primary within the preceding 23 months.

Ill. Rev. Stat. 1971, ch. 46, par. 7-43(d). That Section specifically provided that:

No person shall be entitled to vote at a primary: (d) If he has voted at a primary held under this Article 7 of another political party within a period of 23 calendar months next preceding the calendar month in which such primary is held:

~~Provided, participation by a primary elector in a primary of a political party~~ which, under the provisions of Section 7-2 of this Article, is a political party within a city, village or incorporated town or town only and entitled hereunder to make nominations of candidates for city, village or incorporated town or town offices only, and for no other office or offices, shall not disqualify such primary elector from participating in other primaries of his party: And, provided, that no qualified voter shall be precluded from participating in the primary of any purely city, village or incorporated town or town political party under the provisions of Section 7-2 of this Article by reason of such voter having voted at the primary of another political party within a period of 23 calendar months next preceding the calendar month in which he seeks to participate in held. Ill. Rev. Stat. 1971, ch. 46, par. 7-43(d).

In 1973, however, in *Kusper v. Pontikes*, 414 U.S. 51, 94 S.Ct. 303 (1973), the U.S. Supreme Court struck down the so-called "23 month rule" applicable to voters. The Court ruled that the 23-month restrictions was an unconstitutional restriction on the right of free political association protected by the First and Fourteenth amendments, because "[o]ne who wishes to change his party registration must wait almost two years before his choice will be given effect." *Id.* at 57, 94 S.Ct. at 307. The statute was unconstitutional

because it had the effect “to ‘lock’ the voter into his pre-existing party affiliation for a substantial period of time following participation in any primary election, and each succeeding primary vote extends this period of confinement.” *Id.* at 57, 94 S.Ct. at 308.

At the same time, Illinois law also imposed party-switching restrictions on both voters who signed candidates’ nominating petitions and voters who sought to become political party candidates. Ill. Rev. Stat. 1971, ch. 46, par. 7-10. That provision explained that:

For the purpose of determining eligibility to sign a petition for nomination or eligibility to be a candidate under this Article, A ‘qualified primary elector’ of a party (1) is an elector who has not requested a primary ballot of any other party at a primary election held within 2 years of the date on which the petition must be filed or (2) is a first-time voter in this State registered since the last primary of an even-numbered year preceding the date on which the petition must be filed, but no such person may not sign petitions for or be a candidate in the primary of more than one party.” Ill. Rev. Stat. 1971, ch. 46, par. 7-10.

Just one year after the U.S. Supreme Court’s decision in *Kusper v. Pontikes*, the Illinois Supreme Court struck down the two-year party-switching restriction on petition signers in *Sperling v. County Officers Elec. Bd*, 57 Ill.2d 81, 309 N.E.2d 589 (1974). Sperling had filed nominating papers to run as a Democratic judicial candidate in the 1974 primary election, and was challenged because he had voted in the 1972 Republican primary election. *Id.* at 82, 309 N.E.2d at 590. In other words, the Court was squarely presented with the two-year party-switching prohibition.

The *Sperling* Court went on to also render the two-year party-switching restriction applicable to candidates unenforceable because the party-switching restrictions on voters and petitions signers were so intertwined with the restrictions on candidates, that the General Assembly would not have enacted the restriction applicable to candidates alone. *Sperling* at 86, 309 N.E.2d at 592. As a result, the Court concluded that “the restrictions

upon candidates cannot be considered independent and severable from the invalid portions of the plan.” *Sperling* at 86, 309 N.E.2d at 592. The Court went on to invite further clarifying legislation by the General Assembly, but until such time the party-switching restrictions on candidates were rendered “inoperable” by the Court’s decision in *Sperling. Dooley v. McGillicuddy*, 63 Ill.2d 54, 60, 345 N.E. 102, 105 (1976).

As a result of *Kusper* and *Sperling*, both the 23-Month Rule applicable to voters and the two-year party-switching restrictions applicable to petition signers and candidates were rendered unenforceable. In response, the General Assembly took two separate actions prior to this year’s legislation. Most recently, the General Assembly repealed the 23-Month restrictions from Section 7-43. P.A. 95-699. Eff. Nov. 9, 2007. More importantly for purposes of this case, that legislation also repealed the only restriction imposed upon petition signers. Prior to this enactment, Section 7-43(c) provided that a person who signed an independent candidate’s nominating petition was ineligible to vote in a partisan primary.¹

The General Assembly did not further amend this Section until this year’s legislation, cited above, that imposed the independent candidacy prohibitions on those who either voted in, or filed a Statement of Candidacy for, the immediately preceding primary election. P.A. 97-681, eff. 3-30-12.

Prior to that action, the General Assembly also repealed the applicable provisions of the two-year party switching restrictions of Sections 7-10 and 8-8. P.A. 86-1348, eff.

¹ At the time, independent candidate filed nominating petition at the same time as established party candidates, not with new party candidate as they do today. That filing period for independent candidates was declared unconstitutional in *Lee v. Keith*, 463 F.3d 763, 771 (C.A. 7, 2006).

Sept. 7, 1990. Specifically, Public Act 86-1348 changed Sections 7-10 and 8-8 as follows:

~~For the purpose of determining eligibility to sign a petition for nomination or eligibility to be a candidate under this Article, A 'qualified primary elector' of a party (1) is an elector who has not requested a primary ballot of any other party at a primary election held within 2 years of the date on which the petition must be filed or (2) is a first-time voter in this State registered since the last primary of an even-numbered year preceding the date on which the petition must be filed, but no such person may not sign petitions for or be a candidate in the primary of more than one party." *Id.*~~

Illinois law once imposed party-switching restrictions on voters, candidates, and petition signers. After the Illinois Supreme Court ruled those restrictions unconstitutional, the General Assembly repealed the offending provisions from the Election Code. This year, the General Assembly reinstated party-switching and, more importantly for this case, independent candidacy restrictions on two of the three: voters and candidates. The fact that the General Assembly did nothing to re-impose similar restrictions on petition signers cannot be ignored. The Candidate simply did not violate any provision of Illinois law, and as a result, the Objector's Petition should be dismissed.

3. Because the Candidate Voted a Non-Partisan Ballot in the Primary Election, She is Eligible to Run as an Independent Candidate in the General Election.

Objector's argument seems to be that because the Candidate signed a Republican nominating petition sometime in the fall of 2011, she is somehow locked into the Republican Party until, at least, after the 2012 General Election. What then of the fact that she chose to disaffiliate from the Republican Party by voting a non-partisan ballot in the March, 2012 Primary Election? What if a person signed a Republican petition and voted in the Democratic Primary? Are they locked into both parties? What if they then sign petitions for a Green Party candidate too?

Objector's theory is more offensive to the Constitution than either of statutes invalidated in *Kusper* and *Sperling*. In those cases, both the U.S. Supreme Court and the Illinois Supreme Court invalidated the so-called 23-month rule because a statute that locked a person into a political party (and, of course, out of other parties) for that long violated the First Amendment. Here, Objector would lock Ms. Beaubien into the Republican Party for considerably longer than that. The first date to circulate petitions for the 2012 Primary Election was September 6, 2011. 10 ILCS 5/7-12, 7-10. According to Objector, a person signing a petition during that first week is locked into whatever party petition he or she signs. The term of this sentence lasts past the primary, according to the Objector, and up through the General Election. As a result, a person who did that could be locked into that party until the following primary election two years later. In other words, person who signed a nominating petition as early as September, 2011 would have no meaningful opportunity to free themselves from that party until the 2014 primary election – 31 Months after signing the petition. At best, a person could release themselves from the grip of that party by signing a petition in September, 2013, but that is still is longer (by one month) than the periods invalidated in *Kusper* and *Sperling*.

In light of the fact that the General Assembly removed the party-switching restrictions imposed on petition signers from the Election Code after they were declared unconstitutionally long, Objector's argument that an even longer restriction somehow applies strains credulity. The Objector's Petition should be dismissed.

C. The Objector Misconstrues the Meaning of the Phrase "Qualified Primary Voter" for Purposes of Signing a Nominating Petition.

Objector seems to have latched on to the preamble of the Primary Election nominating petitions attached to the Objector's Petition, which contains the language

“[w]e, the undersigned, qualified primary voters...of the Republican Party...” and believes that this clause somehow locks her into the Republican Party and precludes and independent candidacy in the General Election. This, of course, begs the question, what does it mean to be a “qualified primary elector”? Fortunately, for purposes of signing nominating petitions, the Election Code provides an explicit answer.

Section 3-1.2 of the Election Code, which is entitled, “Eligibility to sign petition”, provides:

For the purpose of determining eligibility to sign a nominating petition or a petition proposing a public question the terms "voter", "registered voter", "qualified voter", "legal voter", "elector", "qualified elector", "primary elector" and "qualified primary elector" as used in this Code or in another Statute shall mean a person who is registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition. Any person, otherwise qualified under this Section, who has not moved to another residence but whose address has changed as a result of implementation of a 9-1-1 emergency telephone system shall be considered a "voter", "registered voter", "qualified voter", "legal voter", "elector", "qualified elector", "primary elector", and "qualified primary elector". 10 ILCS 5/3-1.2

Thus, for purposes of signing a nominating petition, the only action the Candidate is accused of taking here, the phrase “qualified primary elector” means a person who is (or was) registered to vote at the address listed on the petition at the time of signing. Thus, by stating that she was a “qualified primary voter” she was simply a registered voter residing at the address listed on the petition. Objector does not dispute that she is a registered voter at the address listed on those petitions.

D. Any Interpretation of the Election Code that Prohibits a Person Who Signed a Partisan Primary Petition from Running as an Independent Candidate in the General Election is Unconstitutional.

For the reasons set forth above in Section B(2), and interpretation of the Election Code that would preclude a person who signed a partisan nominating petition for a

primary election from running as an independent candidate (after voting non-partisan in the primary) in the ensuing General Election would violate the person's First Amendment rights of speech and association under the U.S. Constitution. In addition, such an interpretation would violate Article I, § 2 (equal protection), § 4 (free speech); Article III, § 4 (free and equal elections), and Article IV, § 2 (legislative qualifications) of the Illinois Constitution.

E. Illinois Law Favors Ballot Access so that the Voters May Choose Their Elected Officials.

In Illinois, there is an overriding interest in ballot access, which has been zealously protected by this Court because it permits voters to choose the officials who will govern them. *See Bryant v. Cook County Officers' Elec. Bd.*, 553 N.E.2d 25, 553 N.E.2d 25 (1st Dist. 1990); *see also Briscoe v. Kusper*, 435 F.2d 1046 (7th Cir.

1971)("Access to official election ballots represents an integral element in effective exercise and implementation of [freedoms of speech and association]"); *Bacon v. Holtzman*, 264 F.Supp. 120 (N.D. Ill. 1967)(Illinois Election Code provisions should be interpreted liberally to permit candidates to qualify); *Sullivan v. County Officers Electoral Bd. of DuPage County*, 225 Ill.App. 3d 691, 588 N.E.2d 475 (2d Dist. 1992)(access to position on the ballot is a substantial right which should not lightly be denied).

The fact that this Candidate is an independent candidate only heightens the need to ensure that her rights are not trampled. The Supreme Court has noted that ballot access laws do "not permit a State to completely insulate the two-party system from minor parties' or independent candidates' competition and influence." *Timmons v. Twin*

Cities Area New Party, 520 U.S. 351, 366-67, 117 S.Ct. 1364 (1997); *see also Lee v. Keith*, 463 F.3d 763, 771 (C.A. 7, 2006).

III. Conclusion.

WHEREFORE, for the foregoing reasons, the Candidate respectfully prays that the Motion to Strike and Dismiss the Objector's Petition be granted.

Respectfully submitted,
Candidate

By: _____
One of his attorneys

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**BEFORE THE ILLINOIS STATE BOARD OF ELECTIONS
SITTING AS STATE OFFICERS ELECTORAL BOARD**

David McSweeney

Objector,

vs.

Dee Beaubien

Respondent.

Case #: 12 SEOB GE 507

**Objector's Response To Candidate's Motion
To Strike and Dismiss Objector's Petition**

Objector herein, David McSweeney, hereby responds to the Candidate's motion to strike and dismiss the Objector's Petition as follows:

Introduction

This is a party-switching case. Here, a person who now purports to be an Independent candidate, was for many years a member of the Republican Party. During the current election cycle which began with the circulation of established party nominating petitions on September 6, 2011, the Candidate chose to participate in the affairs of the Republican Party by signing nominating petitions for at least two Republican candidates. Thereafter, the Candidate apparently became dissatisfied with the likely outcome of the race for the Republican nomination for the Office of Representative in the General Assembly for the 52nd Representative District. She now seeks to go outside of the Party primary process and have her name placed directly onto the General Election ballot as a candidate for that very same office. Not only does she wish to change sides, she wishes to capture, for herself, the authority she failed to influence in the forum she chose.

The Objector believes that, as a voter, Mrs. Beaubien is entitled to change her mind and to change her political allegiances. However, Mrs. Beaubien is not a mere voter, she is a candidate for office. The law rightly holds candidates to a higher, more restrictive, standard than mere voters or petition signers when it comes to changes in party affiliation. *Sperling v. County Officers Electoral Board*, 57 Ill.2d 81 (1974). Because she has

chosen to participate in the Republican Party's nomination process during the 2011-2012 election cycle, the Candidate is not eligible to now go outside of that process, and run for office as an Independent candidate during this period. Accordingly, the Candidate's Motion must be denied and the Objection sustained.

Argument

I. The Election Laws Are Intended To Foster The Cohesiveness Of Political Parties, Not To Sanction Independent Candidacies That Are Prompted By Pique or Short-Range Political Goals.

The United States Constitution ensures Americans the right to vote and the right to petition their government for redress of grievances. To make these rights effective, the Constitution ensures the rights both to citizens individually but, more importantly, to citizens who band together for political action. It is these associational rights which give rise to political parties.

Illinois law and public policy fosters these rights by fostering the cohesiveness of political parties, which, in turn, promotes the State's interest in the stability of its political system. Numerous provisions in the Election Code reflect these principles. For instance, §§7-10 and 8-8 prohibit a person from signing a nominating petition for a candidate of one party, and then running as a candidate in another party. 10 ILCS 5/7-10; 5/8-8. Pursuant to §7-43, a person cannot run as a candidate of an established party, and then run as an Independent candidate in the same election cycle. 10 ILCS 5/7-43. Similarly, §7-43 prohibits a person from voting in the primary of an established party, and then running as an Independent candidate in the same election cycle. *Id.* Pursuant to §7-44, a person cannot declare his or her affiliation to one political party, and then vote in the primary election of another political party.

Article 10 of the Election Code, which addresses independent and new party candidacies, likewise expresses these principles. For example, pursuant to §§10-3 and 10-4, a person cannot circulate nominating petitions for a candidate of an established party, and then circulate petitions for an Independent candidate, or a candidate of a new party in same election cycle. 10 ILCS 5/10-3; 5/10-4. The rationale for rules such as these is clear. These provisions are intended to prevent party raiding and to work against candidacies that are "prompted by short-range political goals, pique or personal quarrel." *Storer v. Brown*, 415 U.S. 724 (1974); *Citizens for John W. Moore Party v. Board of Election Commissioners of the City of Chicago*, 794 F.2d 1254 (1986).

The United States Supreme Court explained these principles well in *Storer*. There, the Court considered and found constitutional provisions of California law which prevented some candidates from ballot access as independent candidates on grounds of their recent participation in the activities of established political parties. 415 U.S. 724 (1974). In that case, the Court majority said:

After long experience, California came to the direct party primary as a desirable way of nominating candidates for public office. It has also carefully determined which public offices will be subject to partisan primaries and those that call for nonpartisan elections. *(footnote omitted)* Moreover, after long experience with permitting candidates to run in the primaries of more than one party, California forbade the cross-filing practice in 1959. *(footnote omitted)* A candidate in one party primary may not now run in that of another; if he loses in the primary, he may not run as an independent; and he must not have been associated with another political party for a year prior to the primary. See §§ 6401, 6611. The direct party primary in California is not merely an exercise or warm-up for the general election but an integral part of the entire election process, *(footnote omitted)* the initial stage in a two-stage process by which the people choose their public officers. It functions to winnow out and finally reject all but the chosen candidates. The State's general policy is to have contending forces within the party employ the primary campaign and primary election to finally settle their differences. The general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds. The provision against defeated primary candidates running as independents effectuates this aim, the visible result being to prevent the losers from continuing the struggle and to limit the names on the ballot to those who have won the primaries and those independents who have properly qualified. The people, it is hoped, are presented with understandable choices and the winner in the general election with sufficient support to govern effectively.

Section 6830(d) (Supp. 1974) carries very similar credentials. It protects the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party and take the alternative course to the ballot. It works against independent candidacies prompted by short-range political goals, pique, or personal quarrel. It is also a substantial barrier to a party fielding an "independent" candidate to capture and bleed off votes in the general election that might well go to another party.

A State need not take the course California has, but California apparently believes with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See *The Federalist*, No. 10 (Madison). It appears obvious to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status. Nor do we have reason for concluding that the device California chose, § 6830(d) (Supp. 1974), was not an essential part of its overall mechanism to achieve its acceptable goals. As we indicated in *Rosario*, the Constitution does not require the State to choose ineffectual means to achieve its aims. To conclude otherwise might sacrifice the political stability of the system of the State, with profound consequences for the entire citizenry, merely in the interest of particular candidates and their supporters having instantaneous access to the ballot.

We conclude that § 6830(d) (Supp. 1974) is not unconstitutional, and Storer and Frommhagen were properly barred from the ballot as a result of its application. *(footnote omitted)* Cf. *Lippitt v. Cipollone*, 404 U.S. 1032 (1972). **415 U.S. at 734-736.**

It is important to note that the provisions held constitutional in *Storer* "locked" a candidate into his or her prior party based on the *failure to disaffiliate* prior to seeking ballot access as an independent. Here, the Candidate is "locked" into the Republican Party for this election cycle not because of her *inaction* but because of her *action* in signing two petitions in which she affirmatively alleges that she is a "member" of and

“affiliated with the Republican Party.” Thus the Candidate’s alleged deficiency is not a matter of the passage of time but her affirmative action and choice to actively participate in the Republican candidate selection process. The restriction on the Candidate here is more narrowly tailored and fully within the candidate’s control than the restriction held constitutional in *Storer*.

In the *Moore* case, an individual filed for office in the Primary as a Democrat, but then withdrew, and, using the same group of circulators, attempted to place himself on the General Election ballot as a new party candidate. Applying §10-4, the *Moore* Court invalidated the petitions circulated by individuals who had circulated for a Democrat within that election cycle. The *Moore* Court also provided the rationale for this prohibition in §10-4, finding that it promotes a number of constitutionally compelling purposes. In particular, §10-4 aids cohesion of political parties, by “helping political parties to act as entities selecting and offering candidates to the voters – an interest the [Supreme] Court has found of the highest order.” *Id.* Section 10-4 also acts to limit voter confusion, and helps prevent party raiding or other maneuvers that could affect the quality of the candidates who will be on the ballot. As the Court noted, “dirty tricks are not unknown in American politics.” *Id.*

The *Moore* rationale is instructive. The Candidate’s actions of participating in the nominating process of a political party, and now seeking to access the General Election ballot outside of the political party process is an act that is deleterious to the cohesion of political parties. Under the rationale of *Moore*, had the Mrs. Beaubien desired to run for this office, she should have run in the Republican Primary, after having declared herself a member of the Republican Party, as political parties provide the valuable service of vetting and selecting political candidates.

While it is true that §10-3 contains no express prohibition against an individual signing a partisan nominating petition and then running as an Independent or new party candidate, it is clear that this type of action is prohibited as a general matter under the Election Code, and that prohibition should be applied here. The policies espoused by decisions such as *Storer* and *Moore* are contrary to the Candidate’s actions in this case. Further, given the express restrictions found throughout Articles 7, 8 and 10 as detailed above, this Board should sustain the Objection, and deny the Candidate’s Motion.

Moreover, this Board must be observant of the notion that candidates are more restricted in their ability to freely switch parties – a policy made clear by the Illinois Supreme Court in *Sperling v. County Officers Electoral Board*, *supra*.

A statute must be read in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it. *Board of Education, Joliet Township High School District No. 204 v. Board of Education, Lincoln Way Community High School District No. 210*, 231 Ill.2d 184 (2008). A Court must

construe the meaning of a statute so that it is consistent with other statutes addressing the same subject. *MQ Construction, Co. v. Intercargo Ins. Co.*, 318 Ill.App.3d 673 (2000). In the event a statute concerning the conduct of elections is not detailed or complete, then the provisions of the general Election Code – the overall statutory scheme - will govern as to the omitted procedures. *Mashni v. Laski*, 351 Ill.App.3d 727 (1st Dist. 2004), citing *Solomon v. North Shore Sanitary District*, 48 Ill.2d 309 (1971). Here, while not explicitly prohibited in Article 10, the Candidate's declaration of affiliation with the Republican Party on petitions renders her ineligible to run as an Independent candidate in the same election cycle.

II. Recent Decisions Have Made It Clear That The Candidate Is Not Eligible To Run As An Independent After Having Participated In The Nominating Process Of An Established Political Party.

During recent years, the Illinois Appellate and Supreme Courts have given us direction respecting the extent to which candidates may participate in the affairs of one political party and then seek elective office outside of that party. In *Cullerton v. Du Page County Officers Electoral Board*, 384 Ill. App. 3d 989 (2nd Dist. 2008), a person who had voted in the Republican primary election was appointed by the Democratic Party to fill a vacancy in nomination as a Democratic candidate for State Senate. In a broad, sweeping decision, the *Cullerton* Court held that because the candidate had cast a ballot in the most recent Republican primary, he was ineligible to stand as a Democratic candidate. Two years later, the Illinois Supreme Court decided *Hossfeld v. Illinois State Board of Elections*, 238 Ill. 2d 418 (2010) narrowing the sweep of the language in *Cullerton* holding that Illinois law permitted party-switching *between* election cycles but not *within the same election cycle* as in *Cullerton*.

Finally, and perhaps most instructive to the instant case, the First District decided the matter of *Rosenzweig v. Illinois State Board of Elections*, 409 Ill. App. 3d 176 (1st Dist. 2011). In *Rosenzweig*, the candidate signed a Democratic Primary petition and then, the following month, sought to run for the same office as a Republican. After a torturous journey through the Courts for reasons not directly relevant here, the Appellate Court held that the candidacy was impermissible since the relevant statutes, §§8-8 and 7-10 of the Election Code, forbid the signing of a party primary nominating petition of one party and then switching to another party as a candidate at the same primary election. *Id*; 10 ILCS 5/8-8 and 7-10.

This case presents almost the same factual circumstances as *Rosenzweig*. The difference is that the Candidate's party switch - or more precisely, switch from being a Republican to being an Independent - comes within the same election cycle but after Primary Day has passed. The Candidate argues in her Motion that while the Article 7 and Article 8 forbid this kind of a party switch, Article 10 does not. Thus she seeks to do

indirectly that which she is forbidden to do directly. The State Board should find that the Election Code's statutory scheme forbidding party switching within an election cycle should be implied even if it is not expressly present in the wording of Article 10.

III. Restrictions Against Party-Switching Within A Single Election Cycle Do Not Unconstitutionally Add Qualifications For Office Inconsistent With The 1970 Constitution.

The Candidate complains that the Election Code does not provide that Independent candidates are subject to party-switching restrictions and, if there were, that would unconstitutionally impose additional qualifications on the office of Representative in the General Assembly the qualifications for which are already provided for in the 1970 State Constitution. First, the party-switching restrictions for established party candidates are plainly constitutional as enforced by the *Hossfeld*, *Cullerton* and *Rosenzweig* cases. Second, such restrictions are completely consistent with the Constitutional requirements and should not be seen as additive. See *Daniel Goodman v. Chris Ward*, 241 Ill.2d 398, 411 (2011) in which the Supreme Court rejected this "additional qualification" argument.

Conclusion

For the reasons detailed above, the Candidate's Motion To Strike And Dismiss should be denied and the Objection herein sustained.

Respectfully submitted,



Richard K. Means

and

John G. Fogarty, Jr.

Attorneys For Objector

July 13, 2012

McSweeney,)	
)	
Petitioner-Objector,)	
)	
v.)	No. 12-SOEB-GE-507
)	
Beaubien,)	
)	
Respondent-Candidate.)	

NOW COMES, Candidate, by and through his attorney, Michael J. Kasper, and moves to strike and dismiss the Objector's Petition and in support thereof states as follows:

A. The Objector Concedes that the Candidate has Not Violated Any Provision of the Election Code.

Instead, the Objector would have the candidate removed from the ballot (and the 3,000 petition signers supporting her silenced) “as a general matter under the Election Code”; apparently a sort-of “none of the above” offense lying in wait to ensnare those

incapable of reading between the lines of the Election Code. The notion that would-be candidates are supposed to infer “general matters” beyond the simple directives of the Code is offensive to any concept of fairness of justice. The Objector would treat the Election Code the way junior high students treat *Moby Dick*, searching for hidden meanings and deeper truths.

B. The Objector’s Reliance on *Storer v. Brown* is Instructive.

The Objector dedicates much of his Response to the U.S. Supreme Court’s decision in *Storer v. Brown*, 415 U.S. 724 (1974). In that case, the Court upheld a California *statute* that precluded independent candidacies by people who had voted in a partisan primary or who had been registered as members of a political party during the prior year. *Id.* In upholding the *statute*, the Court noted that “[a] State need not take the course

California has...” *Id.* at 735. Indeed, Illinois has not taken the course California chose.

Instead, Illinois has chartered its own course, adopting a statute similar, but not identical, to the one at issue in *Storer*. Illinois, like California, has a statute providing that a person who votes in a partisan primary cannot run as an independent candidate in the immediately ensuing general election. 10 ILCS 5/7-43. California had additional restrictions on independent candidacies; Illinois does not.

The Objector also points out, emphatically, that the Candidate in *Storer* was disqualified by a “*failure to disaffiliate* prior to seeking ballot access as an independent.” Resp. Mem. p. 3 (emphasis in original). But isn’t that what the Candidate did here? Did she not “disaffiliate” from the Republican Party by voting a non-partisan ballot in the Primary Election? The Candidate clearly did so, but the Objector argues that is not enough. The Objector does not argue that the Candidate *did not* disaffiliate from the

Republican Party, instead he argues that she *could not* disaffiliate. In Objector's world, once a person signs a political party nominating petition, for example on September 6, 2010, that person is imprisoned in that party for, at a minimum, the next two years (the next circulation period) and possibly as long as 30 months (the next primary election). Nothing in the Election Code contains, even as a "general matter", such a patently unconstitutional restriction.

C. The Party Switching Cases Actually Involved Candidates Switching Parties.

In the three so-called party switching cases, *Cullerton*, *Hossfeld*, and *Rosenzweig*, the would-be candidate attempted to switch from one established political party to another. Not only did they do so in the face direct statutory language (contained in Section 7-10 of the Code), but they also submitted a statement of candidacy with a contradictory statement of party affiliation. All three submitted the Statement of Candidacy containing the statement that the candidate was "a qualified primary voter" of the applicable party. In contrast, the Candidate's Statement of Candidacy in this case comes from Article 10 of the Election Code, and is completely silent regarding party affiliation. Her Statement of Candidacy simply says "I am a qualified voter" and am "a candidate for election..." More importantly, the Candidate here is not switching from one party to another, making these cases inapplicable.

Moreover, any lingering issues or questions regarding party switching have been resolved by the General Assembly this year. Public Act 97-681. Section 7-43 now expressly provides that a person who votes in a partisan primary, or who files papers to run in a partisan primary may not run as a candidate of another established party or as an independent in the following general election. 10 ILCS 5/7-43. This resolves any

questions about the scope of the *Cullerton* and *Hossfeld* decisions. The fact that the General Assembly remained silent regarding petition signers also means that the General Assembly did not intend to disturb the Court's decision in *Rosenzweig*. Had the General Assembly wanted to prohibit a partisan petition signer from running as an independent it could have done so, but it did not.

Respectfully submitted,
Candidate

By: _____
One of her Attorneys

Michael J. Kasper
222 N. LaSalle, Suite 300
Chicago, IL 60601
312.704.3292
312.368.4944 (facsimile)

**BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS**

In the Matter of:

Scott Alexander

Objector

vs.

Paula Bradshaw

Candidate

Board File#: 12 SOEB GP 108

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

I. PROCEDURAL HISTORY

The Candidate, Paula Bradshaw has filed nominating petitions in support of ~~his~~ ^{her} placement on the ballot for the office of Representative in Congress for the 12th Congressional District.

The Objector, Scott Alexander, filed certain objections to those nominating petitions.

The State Board of Elections, sitting as the State Electoral Board appointed Philip Krasny as the Hearing Officer to conduct a hearing on the objections to the nominating petitions and present recommendations to the SBE.

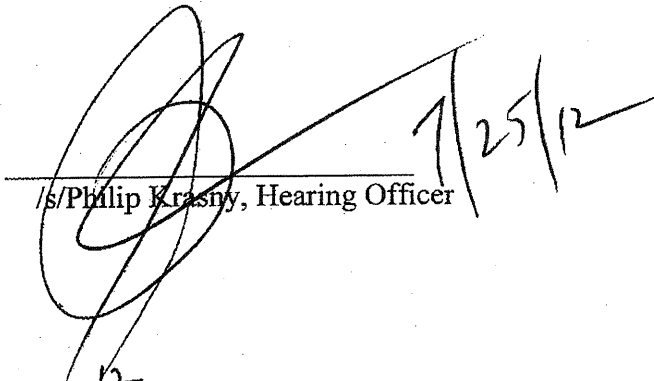
A case management conference was held and was attended by the Candidate's attorney, Andrew Finko. The Objector was represented by Michael Kasper

The Candidate filed a Motion to Strike the Objector's Petition;

Prior to the scheduled records exam ("binder check"), the Objector withdrew his petition.

RECOMMENDATIONS

It is recommended that the name of the Candidate, Paula Bradshaw, should remain on the ballot for the office of Representative in Congress for the 12th Congressional District.


/s/Philip Krasny, Hearing Officer

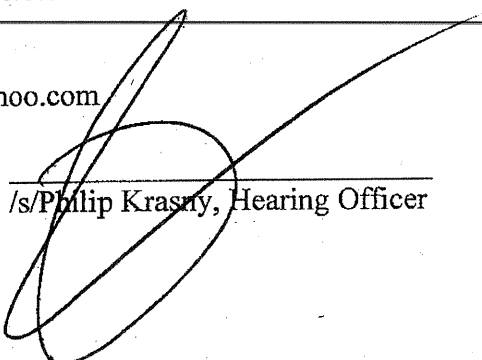
CERTIFICATION

The undersigned certifies that on July 25, 2007, the RECOMMENDATIONS OF HEARING OFFICER was forwarded via e-mail to:

Steve Sandervoss at ssandvoss@elections.il.gov
General Counsel State Board of Elections

Michael Kasper at mjkasper60@mac.com
Attorney for Objector

Andrew Finko at green.attorney@yahoo.com
Attorney for candidate


/s/Philip Krasny, Hearing Officer

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

Alexander,

)

)

Petitioner-Objector,

)

)

v.

)

No. 12-SOEB-GE-108

)

Bradshaw,

)

)

Respondent-Candidate.

)

WITHDRAWAL OF OBJECTOR'S PETITION

NOW COMES, Objector, by and through his attorney and hereby withdraws his
Objector's Petition.

Michael J. Kasper

222 N. LaSalle, Suite 300

Chicago, IL 60601

312.704.3292

312.368.4944 (facsimile)

Attorney No. 33837

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

Joseph Morris

Objector

-v-

Edgar Montalvo

Candidate

12 SOEB GP 500

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was first heard on June 19, 2012 and assigned to this Hearing Officer. A case management conference was held on said date. At the first hearing, the Objector appeared through counsel Matthew M. Welch of Odelson and Sterk and the candidate appeared through counsel John Fogarty. After various motions were filed and a records examination conducted, the Objector filed a Motion to Withdraw Objector's Petition, a copy of which is attached hereto.

Said Motion was granted.

RECOMMENDATION

In light of the withdrawal of the Objector's Petition, the matter is moot. Accordingly, it is my recommendation that the nominating papers of candidate Edgar Montalvo be deemed **valid** and that the name of candidate Edgar Montalvo for the office of State Senator in the 19th Legislative District **be** printed on the ballot at the November 6, 2012 General Election.

Respectfully submitted,

Barbara Goodman /s/

Barbara Goodman
Hearing Officer
7/31/12

**BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS**

In the Matter of:

Tim Storm and Brian Eck

Objector

vs.

John Hartman

Candidate

Board File#: 12 SOEB GP 506

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

I. PROCEDURAL HISTORY

The Candidate, John Hartman, has filed nominating petitions in support of his placement on the ballot for the office of Representative in Congress for the 13th Congressional District.

The Objectors, Tim Storm and Brian Eck, have filed certain objections to those nominating petitions.

The State Board of Elections, sitting as the State Electoral Board, appointed Philip Krasny as the Hearing Officer to conduct a hearing on the objections to the nominating petitions and present recommendations.

A case management conference was held and was attended by the Candidate's attorney, Andrew Finko. The Objector was represented by John Fogarty.

The Candidate filed a Motion to Strike the Objector's Petition; The Objectors filed a Response and the Candidate filed a Reply.

The Objectors requested the issuance of subpoenas and the Candidate filed objections to the request. The hearing officer made a recommendation to the State electoral Board regarding the requested subpoenas.

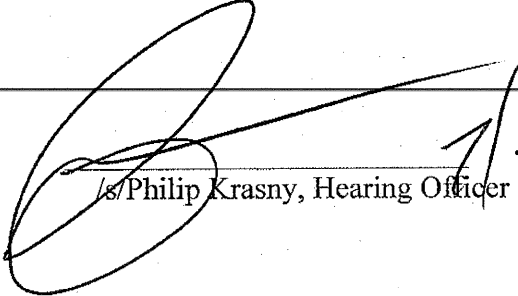
A records exam ("binder check") was conducted on 7/17/12 . The results showed that the Candidate had filed 7947 signatures and the Objectors objected to 4319 signatures. 2154 of the objections were sustained, resulting in 5793 valid signatures, which was in excess of the 5,000 required by statute.

A hearing was conducted on July 25, 2012 and attended by the Candidate's attorney, Andrew Finko. The Objector was represented by John Fogarty.

At the hearing the Objectors withdrew his petition.

RECOMMENDATIONS

It is recommended that the name of the Candidate, John Hartman, should remain on the ballot for the office of Representative in Congress for the 13th Congressional District.



/s/Philip Krasny, Hearing Officer

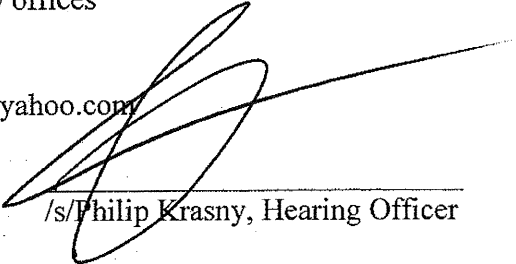
CERTIFICATION

The undersigned certifies that on July 25, 2012, the RECOMMENDATIONS OF HEARING OFFICER was forwarded via e-mail to:

Steve Sandervoss at ssandvoss@elections.il.gov
General Counsel State Board of Elections

John Fogarty at John@fogarty-law.com
Attorney for Objectors

Andrew Finko at green.attorney@yahoo.com
Attorney for Candidate



/s/Philip Krasny, Hearing Officer